[redacted]

TRANSCRIPT OF RECORD

Supreme Court of the United States

[redacted]

No. 52

[redacted]

C. J. LOWENSTEIN, PETITIONER,

vs.

W. C. LANGFORD AND G. H. PUCKETT

[redacted]

[redacted]

[redacted]

[redacted]

(31,856)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 342

C. J. LONGEST, PLAINTIFF IN ERROR,

vs.

W. C. LANGFORD AND G. N. PUCKETT

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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IN SUPREME COURT OF OKLAHOMA

No. 11500

C. J. Longest, Plaintiff in Error,

vs.

W. C. Langford et al., Defendants in Error

Precipe for Transcript of Record—Filed March 29, 1926

To the Clerk of the Supreme Court of Oklahoma:

The plaintiff in error having prayed and having obtained a writ of error to the Supreme Court of the United States in the above entitled cause, hereby requests that you prepare a transcript of record of the proceedings in said cause in the Supreme Court of Oklahoma for transmission to and filing in the Supreme Court of the United States, and the plaintiff in error considering that it is not necessary for the entire record in this cause to be before the Supreme Court of the United States for a full and complete understanding thereof, requests that the clerk of this court include in the transcript of record only those matters which are necessary for a complete and full understanding of those questions which are necessary for the Supreme Court to consider in order to present the Federal questions raised in said pleadings, and which are as follows:

First. Amended petition shown at page 47 of the case made on file herein.

Second. Amended answer shown at page 41 of the case made on file herein.

Third. The testimony of G. N. Puckett shown at pages 64 to 77 of the case made on file herein.

Fourth. The testimony of W. C. Langford, shown at pages 107 to 119 of the case made on file herein.

Fifth. Demurrer to plaintiffs' evidence, shown at page 129 of the case made.

Sixth. Deposition of W. F. Bourland shown at pages 130 to 138 of the case made.

Seventh. Motion to dismiss jury shown at page 170 of the case made.

Eighth. Journal entry of judgment shown at page 174 of the case made.

Ninth. The opinion of this court filed herein on the 12th day of January, 1926.

Tenth. The dissenting opinion filed herein by Justice Branson.

[fols. 2-4] Eleventh. The order of the court reviving this cause in the name of Sallie Langford, as administratrix of the estate of W. C. Langford, deceased.

Twelfth. The two orders of the court staying the mandate.

Thirteenth. The certified copy of application to file, shown at pages 78 to 81 of the case made on file herein.

Fourteenth. The deed from G. N. Puckett to W. C. Langford, shown at page 12 of the case made on file herein.

Ledbetter & Ledbetter, Attorneys for Plaintiffs in Error.

Service accepted this the 29th day of March, 1926.

Maro Green & Pruet, Attorneys for Defendants in Error.

[fol. 5] Citation in usual form, showing service on Green & Pruet, filed Mar. 29, 1926, omitted in printing.

[fol. 6] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed March 29, 1926

Now comes C. J. Longest, plaintiff in error, and shows to the court that heretofore to wit, on July 7th, 1925, judgment was rendered in the supreme court of the State of Oklahoma in the above entitled cause, against this plaintiff in error and in favor of the defendants in error, and thereafter and within the time prescribed by the rules of the supreme court of the State of Oklahoma, petition for rehearing was filed, and thereafter said petition for rehearing was acted upon and the original opinion of date July 7th, 1925, was withdrawn, corrected and refiled as of date January 12th, 1926, and by the opinion of the said supreme court of the State of Oklahoma, the judgment of the district court of Jefferson County, Oklahoma, was affirmed and final judgment was rendered as against this plaintiff in error as of date January 12th, 1926, and which judgment so rendered on the 12th of January, 1926, became the final judgment and decree of the State of Oklahoma.

That in said decree and judgment, and in the proceedings of the supreme court of Oklahoma, the same being the highest court of the State of Oklahoma, in which a decision could be had, manifest errors were committed, greatly to the damage and against the interest of this plaintiff in error; that said plaintiff in error was greatly prejudiced thereby; that this is an action brought under the statutes of the United States relating to the alienation of certain lands allotted in the name of a member of the Choctaw Tribe of Indians, which allotment was made under and in pursuance to Section 22 of the Supplemental Treaty between the Chickasaws and Choctaws and the United States, ratified September 25th, 1902, and that the lands herein referred to were inherited by the heirs of Mary E. Puckett, deceased, which inheritance by the heirs of Mary E. Puckett, deceased, was under the laws of Arkansas contained in Chapter 49 of Mansfield's Digest which had been extended over the Indian Territory, now State of Oklahoma, by the

acts of Congress of the United States; that in the trial of this cause in the district court of Jefferson County, Oklahoma, being the trial court wherein said cause originated, and in the supreme court of the State of Oklahoma, there was drawn in question for the consideration of said trial court and the supreme court of the State of Oklahoma, certain acts of Congress and treaties between the Chickasaws and Choctaws and the United States, which treaty is known as the Chickasaw and Choctaw Supplemental Treaty ratified by Congress of date September 25th, 1902, 32 Stat. [fol. 7] at L. 641, and in the trial of said cause in the district court of Jefferson County, Oklahoma, and in the supreme court of the State of Oklahoma, there was interpreted by both of said courts the said treaty as aforesaid, as well as the Act of Congress of ———, 189 , — Stat. at L., —, all of which will be more fully set out and will be seen in the proceedings, and that the decision of the supreme court of Oklahoma was against this plaintiff in error, and this plaintiff in error now alleges that the decision of the supreme court of the State of Oklahoma, being the highest court in the State of Oklahoma in which a decision could be had, was and is contrary to the statutes of the United States and the treaties between the Chickasaws and Choctaws and the United States, all of which will more fully appear in detail from the assignments of error herein; that the supreme court of the State of Oklahoma, in deciding and passing upon the acts of Congress of the United States and the treaties between the Chickasaws and Choctaws with the United States, decided and held contrary to the laws of the United States that a right of curtesy existed in the white husband of an intermarried Choctaw citizen where the intermarried Choctaw citizen died before selecting the land that she was entitled to; that said decision of the said supreme court of the State of Oklahoma is the highest court of the State of Oklahoma wherein a decision could be had,

Wherefore this plaintiff in error prays that a writ of error may issue to the Supreme Court of Oklahoma for the correction of the errors complained of and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the Supreme Court of the United States, and the judgment of the Supreme Court of

the State of Oklahoma may be reversed and judgment rendered for this plaintiff in error.

Ledbetter & Ledbetter, Attorneys for Plaintiff in Error.

Duly sworn to by H. A. Ledbetter. Jurat omitted in printing.

[fol. 8] We, the undersigned, attorneys for defendants in error, hereby accept service of a copy of petition for writ of error in the above entitled cause, this the 29th day of March, 1926.

Green & Pruet, Attorneys for Defendants in Error.

[fol. 9] [File endorsement omitted.]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 29, 1926

Plaintiff in error, in presenting his assignments of error, alleges and states:

First That the supreme court of Oklahoma erred in holding and deciding that the lands described as follows, to wit, the north half of the south half of the northeast quarter, and the north half of the northeast quarter of the northeast quarter, and the northeast quarater of the northwest quarter of the northeast quarter, and the south half of the north half of the northeast quarter of Section Fourteen (14), Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the southeast quarter of the southeast quarter of Section Eight (8), Township 7 South, Range 3 West, were inherited by G. N. Puckett, the husband of Mary E. Puckett who was an intermarried citizen of the Choctaw Tribe of Indians, and in this connection this plaintiff in error alleges and says that the record and proceedings disclose that Mary E. Puckett was an intermarried citizen of the Choctaw Tribe of Indians; that her Indian husband died and she thereafter mar-

ried G. N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, and in this connection the plaintiff in error further alleges and says that the record and proceedings here disclose that the said Mary E. Puckett died more than two years prior to the time that the lands in controversy were selected in her name, and the record and proceedings also disclose that the said Mary E. Puckett was not in possession of the lands at the time of her said death, but that to the contrary the record and proceedings disclose that she was living more than two hundred miles away from said lands, and that at the time of the selection of said land the record and proceedings disclose that one W. F. Bourland was in possession of said land, and by reason of which the said Mary E. Puckett did not die seized and possessed of said land, and by reason of which no right of curtesy could exist as to the lands in controversy whereby the husband, G. N. Puckett, acquired a curtesy right in and to said lands.

Second. The Supreme Court of Oklahoma erred in holding and deciding that said land descended under Section 22 of the Treaty betwen the Chickasaws and Choctaws and the United States, ratified September 25th, 1902.

[fol. 10] Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the right of curtesy could exist in a cause like the one at bar, where Mary E. Puckett was not in actual possession of said lands at the time of her said death.

Fourth. The Supreme Court of the State of Oklahoma erred in holding and deciding that a white man could inherit the lands allotted to a member of the Choctaw Tribe of Indians, and also erred in holding and deciding that the right of curtesy exists prior to actual seizin.

Fifth. The Supreme Court of the State of Oklahoma erred in holding and deciding that W. C. Langford, et al., were entitled to possession of said lands.

Ledbetter & Ledbetter, Attorneys for Plaintiffs in Error.

Service accepted March 29th, 1926.

Green & Pruet, Attorneys for Defendant in Error.

[fol. 11] In Supreme Court of Oklahoma

[Title omitted]

Order Allowing Writ of Error, etc.—Filed March 29, 1926

On this the 29 day of March, 1926, the petition of C. J. Longest being presented to the Honorable Geo. M. Nicholson, Chief Justice of the Supreme Court, and the said Chief Justice of the Supreme Court of Oklahoma being advised in the premises, finds that said writ of error should be allowed.

It is therefore ordered, adjudged and decreed that the writ of error be and the same is hereby allowed, and that all further proceedings in this court be and the same are hereby stayed pending the final determination of this cause in the Supreme Court of the United States.

Geo. M. Nicholson, Chief Justice of the Supreme Court of the State of Oklahoma.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of Oklahoma, by Jessie Pardoe, Deputy. (Seal Supreme Court, State of Oklahoma.)

Service accepted March 29th, 1926.

Green & Pruet, Attorneys for Defendants in Error.

[File endorsement omitted.]

[fol. 12] Copy

In Supreme Court of Oklahoma

[Title omitted]

Order Allowing Writ of Error, etc.—Filed Mar. 29, 1926

Be it remembered that C. J. Longest, on the 29 day of March, 1926, filed and presented in this court a petition herein, praying for a writ of error and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered may be sent to Supreme Court of the United States, and

that said order and further proceedings may be had in the premises as may be just and proper, and upon consideration of said petition, this court desiring to give the petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented,

It is therefore ordered by this court that a writ of error be allowed as prayed upon execution of bond to be approved by the Chief Justice of this court in the sum of $3,000, which bond is to be filed within 10 days from this date, and that said transcript be forwarded in proper form, duly authenticated, to the Supreme Court of the United States.

Witness my hand this the 29 day of March, 1926.

Geo. M. Nicholson, Chief Justice.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of Oklahoma, by Jessie Pardoe Deputy. (Seal.)

Service accepted March 29, 1926.

Green & Pruet, Attorneys for Defendants in Error.

[File endorsement omitted.]

[fol. 13] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

WRIT OF ERROR—Filed March 29, 1926

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Oklahoma, before you, at the October term, 1926, thereof, between C. J. Longest, plaintiff in error, and W. C. Langford, et al., defendants in error, a manifest error hath happened, to the great damage of this plaintiff in error, as by his petition for writ of error appears,

We, being willing that error, if any hath happened, shall be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do you command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the said record and proceedings aforesaid at the City of Washington, D. C., and filed in the office of the clerk of the Supreme Court of the United States on or before the 28 day of May, 1926, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, which of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this the 29th day of March, 1926.

Witness my hand officially with the seal of said court hereto affixed, at Oklahoma City, Oklahoma, this the 29 day of March, 1926.

Harry L. Finley, Clerk of the United States District Court, Western District of Oklahoma. (Seal of United States District Court, Western District of Oklahoma.)

Service accepted 3, 29, 1926.

Green & Pruet, Attorneys for Defendants in Error.

[File endorsement omitted.]

[fols. 14 & 15] Bond on writ of error for $3,000, approved and filed April 5, 1926, omitted in printing.

[fol. 16] In District Court of Jefferson County

No. 3093

W. C. Langford, Plaintiff,

vs.

C. J. Longest et al., Defendants

Amended Petition—Filed January 31, 1919

Comes now G. N. Puckett, leave of the court having first been had and obtained, and makes himself a party plaintiff to this suit and he and W. C. Langford, plaintiffs herein, for cause of action the above named *defendants* allege and state:

1. That the said plaintiff, G. N. Puckett, brings this suit as the grantor of W. C. Langford and for the purpose of protecting his conveyance heretofore made to said plaintiff, Langford and for the use and benefit of said plaintiff, said W. C. Langford.

2. That plaintiffs are the owners of the legal and equitable estate and entitled to the immediate possession of the following described real estate situated in Jefferson County, Oklahoma, to-wit:

N. 2 of S. 2 of N. E. and N. 2 of N. E. of N. E. and N. E. of N. W. of N. E. and S. 2 of N. 2 of N. E. of Section 14, Township 7 South, Range 4 West, and N. 2 of S. E. 4 and N. 2 of S. E. 4 of S. E. 4, Section 8, Township 7 South, Range 3 West.

3. That plaintiffs derived title to said land as follows:

[fol. 17] a. Homestead patent to Mary E. Puckett;

b. Allotment patent to Mary E. Puckett;

c. Deed from G. N. Puckett to W. C. Langford,

copies of which are attached to plaintiff's petition and marked Exhibits A, B, and C, respectively.

That said Mary E. Puckett died intestate in the Indian Territory prior to statehood and at the time of her death was lawfully seized of the above described lands, was at

that time married to and living with her lawful husband, G. N. Puckett by whom she had at that time living children.

4. Plaintiffs further allege that said defendants are in the unlawful possession of said premises and refuses to render possession to these plaintiffs in their damage in the sum of $500.00.

Second Cause of Action

1. Reaffirming each and every allegation made in said first cause of action and adopting the same as though fully set out herein plaintiffs for their second cause of action allege that said defendants have been in the possession of said lands since the first day of January, 1917, collecting, using and appropriating to their own use and benefit the rents and revenues therefrom. And that plaintiffs and especially the said W. C. Langford for whose use and benefit plaintiff G. N. Puckett sues was and has been entitled to the rents from said premises for the years 1917 and 1918 and will continue to be entitled to the rents from said land until possession is obtained and that a reasnable rental value of said premises and the rents thereof for the period that it has been so unlawfully withheld from the plaintiffs is the sum of $700.00 per annum.

[fol. 18] Wherefore plaintiffs pray judgment of the court that the plaintiff, W. C. Langford have and recover of and from the said defendants and each of them the possession of said land above described together with the judgment against said defendants in the sum of $700.00 per annum for each year which said defendants have so unlawfully withheld same from the plaintiffs and for the further sum of $500.00 damages as above alleged for costs of suit and such other and further relief both general and special as the facts and law may warrant.

Green & Pruet, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 19] In District Court of Jefferson County

[Title omitted]

Amended Answer—Filed November 25, 1910

Comes now the defendants and leave of court first had and obtained files this their amended answer herein and so amending for their answer deny generally and specifically each and every allegation in the plaintiff's petition contained except such as are herein specifically admitted.

For special answer herein the defendants, say that the defendant, C. J. Longest, is the owner of two fifths interest in and to the lands sued for and described in the plaintiff's petition, by regular conveyances, and chain of title duly recorded in the records of deeds in and for Jefferson County, Oklahoma, that said conveyances were duly of record long prior to the obtaining of the deed attached as exhibit to the plaintiff's petition, and that the plaintiff was the owner of a three fifth interest in and for said lands, and that the plaintiff were occupying the lands at the time the defendant secured the deed attached to the petition jointly and under a specific acknowledgment each of the others interest therein under an agreement for the division of the rents according to the said interest of the plaintiff and de- [fol. 20] fendant and had been so occupying the same long prior to the time the plaintiff took the deed attached as exhibit to the petition.

For further special answers herein the defendants say, that the allotee Mary E. Puckett was not the owner of the lands herein sued for at the time of her death, and was not in possession of the same and had no interest therein, and was not seized thereof at the time of her death long prior to the time of the selection and allotment thereof to her; that it was Indian lands, and was at the time of the death of the said Mary E. Puckett, in the possession of W. F. Bourland, a member of the Chickasaw Tribe of Indians by blood, who was in possession thereof and occupying the same and the owner of the improvements thereon, and the said Mary E. Puckett was not at the time of her death in possession of same nor had any interest therein, that the same was selected by G. N. Puckett the surviving husband

of the said Mary E. Puckett as the administrator of her estate, the same allotted and patented under such selection, and the only interest the said Mary E. Puckett had in any Indian lands at the time of her death was that of being a member of the Indian tribes, and she was not in any manner seized or possessed of the lands sued for, and no right of curtesy in favor of her said husband G. N. Puckett ever attached to the same or any part thereof.

For further special answer, the defendants allege that the said G. N. Puckett, long prior to the time the defendant, C. J. Longest, obtained the conveyances under which he now claims title to the two-fifth interest in and to said lands announced and declared to the said C. J. Longest that he did not claim any interest in the lands and had no interest [fol. 21] therein, and would have no further claim or control over the same, and he and his vendees is now estopped to claim any right, or title therein under his claim of dower or otherwise, as against the interest of the defendant, C. J. Longest.

For further special answer herein the defendants say, that the grantor of the plaintiff, G. N. Puckett, was not in possession of the premises nor any part thereof at the time of the execution of the deed attached to plaintiff's petition under which he claims, and had not been so in possession for more than one year prior thereto; neither had he collected any rents thereon for more than one year next before the execution of the deed and the same is therefore champertous and void, and confers no right or interest in the land.

Wherefore defendants pray that the plaintiff take nothing by this action and that they recover their costs, herein, and for such other relief as to the court may seem just and proper.

H. A. Ledbetter, J. H. Harper, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 22] In District Court of Jefferson County

[Title omitted]

Statement of Evidence

It is agreed by and between the parties hereto that the following questions and answers of C. J. Puckett may be read in evidence as the deposition of the said G. N. Puckett in the trial of this cause; each party however reserving the right to object in the trial of the cause to any question and answer the same as if the testimony was being given by the witness at the trial, but no objection is made on the point that no notice has been served.

Direct examination.

By Mr. Green:

Q. Your name is G. N. Puckett?
A. Yes, sir.
Q. Where do you live?
A. Madill.
Q. How old are you?
A. 53.
Q. Were you the husband of Mary E. Puckett in her life time?
A. Part of her life time, little better than a year.
Q. You were her husband at the time of her death?
A. Yes, sir.
Q. When did she die?
A. 1903.
[fol. 23] Q. What place?
A. She lived near Bokchito.
Q. That is in the State of Oklahoma?
A. Yes, sir.
Q. She was living there at the time of her death?
A. Yes, sir.
Q. Had Mary E. Puckett been married before she married you?
A. Yes, sir.
Q. What was her former name?
A. Cocheuner.

Q. Did she have any Cocherumer children?
A. Yes, sir.
Q. Can you give their names?
A. One I didn't know her name, I knew her by Babe.
Q. Say there were six of them?
A. Yes, sir.
Q. Did you have any children by her?
A. Yes, sir, one.
Q. How old was it at the time of her death?
A. About January till April.
Q. Is it still living?
A. Yes, sir.
Q. I will ask you if the children of Mary E. Puckett by her former husband, Cocherumer, were as follows: the eldest one was named David Jasper Cocherumer, Nicholas Cocherumer, James Cocherumer, Ella Cocherumer, Marion and McCan Cocherumer, and what is your daughter's name?
A. Ethel Puckett.
[fol. 24] Q. These six children were living children of Cocherumer, and one dead?
A. This girl Jerral is dead and left children
Q. Their name is Jerral?
A. Yes, sir.
Q. How *many* are there?
A. Two or three, I don't know for sure.
Q. Do you know the land involved in this controversy?
A. I don't know the number.
Q. Is it the homestead and surplus of Mary E. Puckett?
A. Yes, sir, I filed it.
Q. Are you administrator?
A. Yes, sir.
Q. Do you know when you filed it?
A. I filed it in 1904.
Q. But the filing certificate will show?
A. Yes, sir.
Q. After you filed that land, did you lease it to anyone?
A. To Frank Bourland.
Q. Was he the first one?
A. Yes, sir.
Q. Remember when that was?

A. Shortly after the filing, he claimed possession of the land and wanted a lease.

Q. And you executed a lease?

A. Yes, sir.

Q. Do you know for how long a term?

A. Five years.

Q. During that time did he pay you rent on that land?

[fol. 25] A. Yes, sir.

Q. Mr. Puckett in that lease do you know whether or not Frank claimed improvements and that was part of what he was to pay you?

A. He claimed possession of part of the improvements and land, 130 acres he claimed them to be his improvements and filed a contest against me.

Q. When you leased him the land were you to get the improvements?

A. Yes, sir, I was to get the improvements and the land what improvements was on it at the end of five years.

Q. After that contract expired did you leave it to any one else?

A. To Frank 130.

Q. This section?

A. Two different places.

Q. What place did you lease to Frank the next time?

A. 110, it lies west of Petersburg, that was supposed to be the surplus and part of the homestead on the river.

Q. One year?

A. Yes, sir.

Q. Was that lease in writing or not?

A. Don't think it was, I went to his office.

Q. Whereabouts?

A. Ardmore.

Q. Whom did you lease it to next?

A. Marbe.

Q. Do you know how long you leased it to him?

A. Think about three years; he only stayed one.

[fol. 26] Q. Did he come to see you about changing it to some one else?

A. No, sir.

Q. How did you find out then he didn't stay but one year?

A. I went out there and found him, and he wanted to

sell and I wouldn't give him permission to sell and he moved off and I re-leased it to Mr. Nell.

Q. How long did he stay?

A. Only a year.

Q. Then who took it?

A. Will and Longest fell in possession of it and claimed I didn't have any right and got me out.

Q. During this time that you speak of is that as far as you know, is that all the leases you made?

A. I rented a part of it to Frank; seems like, there was 100 acres to a fellow by the name of Jackson.

Q. During this time that you speak of, that carries it up to 1914, up till Longest and Langford bought their interests, did you know anything about any of the sales?

A. Yes, sir, I knew about Mr. Bowland buying some.

Q. When was that?

A. Shortly after I filed on it, maybe the same year.

Q. Did you ever talk to Frank Bourland about selling your interest in it?

A. Yes, sir, — think so.

Q. When you talked to him, what interest did you claim? [fol. 27] A. Life dower.

Q. During the time, from the time you first leased it to Frank Bourland up till you made your last lease whenever that was did you have possession of that land at the time, did anybody ever question your right to it from the time you made Frank Bourland the first lease till you made the last lease to Nell?

A. I claimed possession, yes, sir.

Q. You didn't have any trouble?

A. No, sir.

Q. Mr. Puckett, how often did you ever see Frank Bourland about this lease?

A. Don't remember seeing him but one time.

Q. When was that?

A. That was at the execution of the five year lease, I went to Ardmore.

Q. Did you ever see him or talk to him before or at the time you executed the five year lease?

A. No, sir.

Q. Who got that lease, who represented him?

A. Robert Turnbow talked to me.

Q. That is who you gave the lease to for Frank?

A. Yes, sir.

Q. Did you ever talk to Frank Bourland about your interest in that land in which you expressed to him or made the statement to him that you didn't own any interest?

A. No, sir, I don't think I did.

[fol. 28] Q. Did you ever tell him you consulted Cruce & Cruce and they told you you didn't have any interest?

A. (No answer.)

Q. Did you ever consult them?

A. No, sir, no one but George March.

Q. Do you know Mr. Longest?

A. Met him one time.

Q. Where was that?

A. Ardmore; I met him there and Mr. Nell wanted to sell Mr. Longest his lease.

Q. That was during the time the Nell lease was going on and he was transferring it to Longest?

A. Yes, sir, wanted to.

Q. You met them there?

A. Yes, sir.

Q. Did they transfer that lease?

A. I don't know; I didn't have anything to do with the transferring.

Q. Did Longest go on the land and take charge of it?

A. Don't think so, no.

Q. That is the only time you met Longest?

A. Yes, sir.

Q. Did you ever make any statement to him with reference to your ownership to this land, did you make any statement in which you expressed the opinion that you didn't own the land?

A. No, sir.

Q. Were you claiming it at that time?

A. Yes, sir, and doing the renting of it all that time.

[fol. 29] Q. For your self or someone else?

A. Myself.

Q. Did you know by information or otherwise then this interest that Bourland bought had been sold to Longest.

A. Just heard it said.

Q. Did you ever to Bourland or Longest in or in their presence, did you ever disclaim this land?

A. No, sir.

Q. Did you file a suit in this court about some of this land?

A. Yes, sir, Langford and Longest.

Q. Remember when that was?

A. Something like two years.

Q. It was after that suit was filed that Langford bought you out?

A. Yes, sir.

Q. Judge March represented you?

A. Yes, sir.

Q. You were suing them for your life estate in that land?

A. Yes, sir.

Q. You have been made a party plaintiff in this suit for the purpose of protecting your deed to Langford?

A. Yes, sir.

Q. That is satisfactory to you?

A. Yes, sir.

Q. He paid you, did he?

A. Yes, sir.

[fol. 30] Q. What was it?

A. $1,000.00 is what we agreed on.

Q. How long had it been since you received rent on the land?

A. Guess it has been about two years.

Q. From whom did you receive the last rent?

A. Mr. Langford.

Q. Did any time during the years after you first leased to Frank Bourland, up till now, so far as you know, did Frank Bourland or Longest ever claim to own this land entirely?

A. No, sir.

Q. Did they ever make such claim to you?

A. No, sir.

Cross-examination.

By Mr. Harper:

Q. Mr. Puckett you say Mr. Langford agreed to pay you $1,000.00?

A. He paid me $1,000.00 in full.

Q. How was he to pay you?

A. He paid me in money, don't know how him and March settled.

Q. You got yours through Mr. March?

A. No, sir, Will give me the check.

Q. When did you collect rent from Will Langford for that land?

A. The last rent I collected from Will was only one-seventh, as a child's part, about two years ago.

Q. About two years ago you collected from Will Langford for one seventh part of the land?

[fol. 31] A. Yes, sir.

Q. You knew he and Longest had bought out some of the heirs?

A. Yes, sir.

Q. You knew about that at the time the sale was being made?

A. No, I heard they bought two shares apiece.

Q. You said he paid you one seventh; you were claiming at that time to be an heir equally with the children?

A. I was collecting that as my child's part.

Q. You had been collecting all rent for yourself?

A. Yes, sir, part of it, but the question arose that I didn't have any life time dowery and I collected for the child.

Q. When did this question arise?

A. About three years ago.

Q. About the time Mr. Nell was on the place?

A. A year later I think.

Q. Mr. Bourland's lease expired about 1910?

A. Yes, sir.

Q. You rented it to him for 1911?

A. Yes, sir.

Q. And then to Mr. Nell?

A. After the first lease was out I rented to Frank first, and then to Marbee for three and he only stayed one.

Q. He surrendered your last lease?

A. Yes, sir.

Q. That would make 1912?

A. Don't know.

[fol. 32] Q. Bourland stayed until 1911?

A. Yes, sir.

Q. Then Mr. Nell stayed one year?

A. Yes, sir.

Q. That was 1913, he moved off so far as you know?

A. Yes, sir, I don't recollect the date.

Q. At that time *you only* the only rent that you had collected off that lease was one seventh interest?

A. Yes, sir, about that time is when the question arose, when Mr. Langford and these fellows bought these heirs and they claimed that.

Q. At that time you had collected no rents off that place except the one seventh for your child?

A. Yes, sir.

Q. And now Mr. Puckett you say you saw Mr. Longest one time?

A. Yes, sir.

Q. That was in the fall of the year when Nell lived on the place?

A. Yes, sir.

Q. Mr. Nell told you he was going off at that time?

A. Yes, sir.

Q. That Longest was talking about renting the place?

A. He said something about buying my interest.

Q. Mr. Longest had bought some?

A. I don't know; Longest bought from Frank Bourland.

Q. That was back sometime prior to that time?

A. He bought it from Frank sometime shortly after I was talking to him at Ardmore.

[fol. 33] Q. I will ask you Mr. Puckett, if at the time you saw Mr. Longest and Nell at Ardmore in the fall of the year that you speak about, if it was then and there suggested to you by Mr. Nell that he was going to sell his lease to Longest?

A. Yes, sir, something said.

Q. Did Longest ask you then and there if you had any objections and then and there in the presence of Nell you told them that you didn't claim any interest in that land?

A. Don't think I did.

Q. Say whether or not you did or didn't?

A. Best of my knowledge I didn't; I have forgotten.

Q. Mr. Nell told you he wasn't going to occupy the land and didn't you say then and there *there* in the presence that you didn't claim any interest in that land and wasn't going to raise it or have anything to do with it, or words to that effect?

A. If I did, I don't remember it.

Q. You would remember it?

A. My memory is not very good.

Q. If you did that is true?

A. I wouldn't say I did.

Q. The lease was given up?

A. He was talking about leaving.

Q. State whether or not you said that or words to that effect?

[fol. 34] A. I don't know; if I knew I would tell you, I don't know whether I did or not.—couldn't say I did or didn't.

Q. When were you married?

A. About 1902.

Q. Where at?

A. Boketa.

Q. Did you marry under Indian license?

A. United States.

Q. Didn't secure Indian license?

A. No, sir.

Redirect examination.

By Mr. Green:

Q. Mr. Puckett about the time that you had been asked about when that question of courtesy of life estate was being discussed, state whether or not there was a good deal of discussion in the country as to whether or not a husband inherited?

A. How come me to hear about it, Will Langford come to my house and we made a trip to Tishomingo and we were talking about something and the question come up, then that I had no right.

Q. Then if the Supreme Court of Oklahoma has changed their minds about it you have a right to?

(No answer.)

Recross-examination.

By Mr. Harper:

Q. When was it that you and Langford went to Tishomingo and consulted a lawyer?

A. I don't recollect the year, six or seven years ago.

Q. Then six or seven years ago you and Langford went to [fol. 35] Tishomingo and consulted an attorney?

A. We went over there to have papers fixed up.

Q. And you consulted an attorney?

A. We were just talking, I didn't consult him about that.

Q. At that time he told you that you had no dower?

A. He seemed to think it was a question.

Q. From that time on you surrendered your claim as to dower?

A. Yes, sir.

Redirect examination.

By Mr. Green:

Q. Who first advised you that you had a claim?

A. Don't know that I had any adviser on it. Will come down after he bought these other shares on a rushing trip to get me to sell my life dower and said he was on a deal to trade it and I might come in and cause some trouble and offered me $25.00 and I was superstitious and thought if there was any pie there might be some for me and then I consulted March and then I entered a suit for the place back.

Recross-examination.

By Mr. Harper:

Q. That was two years ago?

A. Yes, sir.

Q. From the time you saw Mr. Langford six or seven years ago up till you saw March you never claimed any dowery?

A. There was two years that I was out of the place.

Q. You was out.

A. I collected the child's part.

[fol. 36] W. C. Langford, called as a witness for the plaintiffs and being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Green:

Q. State your name to the Court?
A. W. C. Langford.
Q. Where do you live?
A. Wilson and Petersburg, together.
Q. Where have you lived for the last twenty years?
A. Petersburg.
Q. You know the land in controversy, do you?
A. Yes, sir.
Q. Do you know George N. Puckett?
A. Yes, sir.
Q. I hand you plaintiff's Exhibit Two which purports to be a deed from Geo. N. Puckett to you and ask you to state whether or not that is the G. N. Puckett deed and he executed it?
A. Yes, sir, he executed it.

Mr. Green: We offer exhibit two in evidence.

Mr. Ledbetter: Objected to for the reason it is not stamped with the revenue stamps in accordance with the Revenue Laws.

Court: Overruled.

Mr. Ledbetter: Defendants except.

[fol. 37] Mr. Ledbetter: Objected to for the further reason that Geo. N. Puckett had no right, title, claim or interest in the land at the time of the execution of the deed as is shown by his testimony which has already been introduced in evidence whereby he disclaimed any interest in the land after the year 1912, 1913 and 1914.

Court: Overruled.

Mr. Ledbetter: Defendants except.

Plaintiff's Exhibit Two is admitted in evidence and is as follows, to-wit:

STATE OF OKLAHOMA,
County of Marshall, ss:

Know all men by these presents that G. N. Puckett, party of the first part, in consideration of $1,000.00 and valuable considerations in hand paid, the receipt of which is hereby acknowledged does hereby quit-claim, grant, bargain, sell and convey unto W. C. Langford, party of the second part, the following described real property and premises situate in Jefferson County, State of Oklahoma, to-wit; all my right, title and interest in and to the N. 2 S. 2 N. E. 4 & N. 2 N. E. 4 N. E. 4 & N. E. 4 N. W. 4 N. E. 4 & S. 2 N. 2 N. E. 4 Sec. 14, twp. 7 S. R. 4 W. N. 2 S. E. 4 & N. 2 S. E. 4 S E. 4 Sec. 8, 7 S. 3 W.

Together with all the improvements thereon, and the appurtenances thereunto belonging to have and to hold said described premises, unto the said party of the second part, his heirs and assigns forever.

[fol. 38] Signed and delivered this 26th day of Nov. 1917.

G. N. Puckett.

STATE OF OKLAHOMA,
County of Marshall, ss:

Before me, a notary public in and for said county and State on this the 26th day of November, 1917, personally appeared G. N. Puckett, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein stated.

Geo. S. March, Notary Public. My commission expires May 24, 1919. (Seal.)

STATE OF OKLAHOMA,
County of Jefferson:

This instrument was filed for record on the 28th day of Nov. 1917, at 10 o'clock a. m., and duly recorded in book 57, of Deeds of page 390.

Claude Easterling, County Clerk, by Douglas Cleveland, Deputy. (Seal.)

[fol. 39] Q. I notice that the deed is signed G. N. Puckett, do you know George N. Puckett?

A. Yes, sir.

Q. Did you see him sign that deed?

A. Yes, sir.

Q. That is the same Geo. N. Puckett whose testimony has been read?

A. Yes, sir.

Q. Where is this land situated?

A. Jefferson County, near Petersburg.

Q. Who is in possession of it at the time this law suit was filed?

A. C. J. Longest.

Q. Is it in one or more tracts?

A. Two.

Q. How much is in each tract?

A. 110 acres in Section 14, seven south, four west.

Q. That is all in one body?

A. Yes, sir.

Q. What other tract is there?

A. Section 8, seven south, three west, 100 acres.

Q. Then there is 210 acres of land?

A. Yes, sir.

Q. Prior to the execution of that deed and for the last several years what has been your connection with that land beginning with the first time you ever had any connection with it?

A. The first time I ever had any connection with it Ed Nail had it leased from George Puckett and he wanted to [fol. 40] sell me his lease, a three year lease; he was fixing to leave the country and I figured on buying the lease.

Q. You remember about when that was?

A. 1913, I think in the fall.

Q. Did you buy his lease?

A. I did not buy the lease.

Q. All right what did you do.

A. After that I went and bought two of the children's interest in it.

Q. Two of the Cocheneur childrens'?

A. Yes, sir, James and Ella Cocheneur nee Wall. Then I leased the interest of Jarrel and also of Marion McCan and W. D. Cocheneur was the guardian, I leased those two.

Q. How many Cocheneur interests did you have then?

A. Four and then we had Mr. Puckett lease me his child's interest, made me four Cocheneur interests and one of the Puckett's interests, making five interests.

Q. Did you get possession of the land at the time you took those instruments?

A. No, Mr. Longest had bought a lease from Nell and he refused to let me have any possession or rents at all.

Q. There was a suit brought was there not?

A. Yes, sir, I brought suit for the rents.

Q. That was against Mr. Longest?

A. Yes, sir.

Q. That suit was tried here in this Court?

A. Yes, sir.

[fol. 41] Q. Do you recall for what part of the rent you sued, what interest?

A. Five Sevenths.

Q. And that suit was finally tried and determined in this court?

A. Yes, sir.

Q. You recovered in that suit?

A. Yes, sir.

Q. After that what was done, do you remember about when that suit was determined?

A. 1914, I think.

Q. Was that suit appealed from?

A. No, sir, it was either 1914 or 1915, it was settled

Q. How did you handle the place from then on?

A. He rented the place out himself.

Q. You mean Mr. Longest?

A. Yes, sir, I got a judgment; he did not pay the rent.

Q. You collected the judgment?

A. Yes, sir, this last fall. Mr. Longest rented the land out and paid me. That was 1915, he rented the land in 1915, and paid me a portion of the rent that year.

Q. For 1915?

A. Yes, sir, I think he claimed a third which I did not agree for him to have but that is what he sent me.

Q. What happened if anything in regard to this land?

A. Well during this period of time I had the land leased from Mr. Puckett as guardian of his child. I will go into that to explain that $25.00 deal which came out a while ago.

[fol. 42] I went to Mr. Puckett to lease his land the second time.

Q. Do you remember about when that was?

A. Fall of 1915, I think it was and he wanted to sell his land, he was appointed guardian to sell the child's interest; in other words it had kinder got away from him; I had tried to buy his dower for two years or his life estate, I was advised he had no life estate under the present ruling of the court so I abandoned that and was going to buy his child's interest and he was appointed guardian to sell it thro the court and made an offer to sell it and this $25.00 was a per cent or the check that I gave him on the sale of his child's land, which was not approved by the court, but the sale did not go thro. That is where the $25.00 came in for his life interest that he had in it. He had made Frank Bourland a deed; he said "Well that $25.00 I have got here."

Mr. Ledbetter: Objected to; incompetent, irrelevant and immaterial; hearsay.

Court: Sustained.

Q. In regard to this land what do you mean when you say you had been advised as to Puckett's interest and who had advised you.

A. You had advised me.

Q. What did I advise you.

A. That he would have no life interest under the ruling of the Supreme Court.

Q. That the Supreme Court had held that the husband did not inherit from the wife under the circumstances of [fol. 43] of this case?

A. Yes, sir.

Q. Do you know whether after that you were advised differently?

A. Yes, sir.

Q. Who advised you that time?

A. Yes, sir, you did.

Q. What did I tell you?

Mr. Ledbetter: Objected to; incompetent, irrelevant and immaterial; hearsay.

Court: Sustained.

Plaintiff excepts.

Q. You did eventually go back and buy Puckett's interest?

A. Yes, sir.

Q. Was that after suit was filed?

A. Yes, sir.

Q. Suit was filed against you for possession of the land?

A. Yes, sir I always thought he had an interest and always tried to buy it, I never did give up but what he had it and he never give up but that he had it.

Q. After the suit was filed you had counsel employed?

A. Yes, sir.

Q. And you did go buy the land?

A. Yes, sir.

Mr. Ledbetter: Objected to as leading.

Court: Overruled.

Defendants except.

Q. That is the deed you have just introduced in evidence from Mr. Puckett to you?

A. Yes, sir.

[fol. 44] Q. That suit of Puckett against you never was tried?

A. No, sir.

Q. As I understand from you you have two deeds from the Cochenour children?

A. Yes, sir.

Q. And you have a deed from Mr. Puckett?

A. Yes, sir.

Q. And then this lease?

A. Yes, sir.

Q. Those leases you introduced in evidence, have they expired yet?

A. Yes, sir, I think so.

Q. Say you are in possession of part of the land now?

A. Yes, sir.

Q. What part?

A. That 100 acres in Section eight.

Q. Have you had possession of it all the time?

A. Just got it this year.

Q. They paid the rent to Longest last year?

A. Yes, sir.

Q. The Receiver is in charge of it this year?

A. Yes, sir.

Q. You have not gone in possession of it?

A. No, sir.

Q. You have not been in possession of any of the land since this suit was filed?

A. No, sir.

Q. The year 1917, you took the deed in the fall of that year—that was before the rents were gathered?

A. Yes, sir.

[fol. 45] Q. Did you get any rents that year for the place?

A. No, sir.

Q. Get any for the years 1918 or 1919?

A. No, sir. In 1917 after I got my deed from Puckett I demanded all the rents; an old fellow named Williams had the place in section eight rented, he paid me 5 7 of his rent for 1917 and 2 7 of his rent he put in the bank for Mr. Longest. In section 14 Mr. Longest kept all the rents for 1917 and 1918; and 1918 he collected the rent in section eight again.

Q. What was the custom down there about renting land?

A. Third and fourth.

Q. You know about what was made on this land in 1917, the part you did not get the rent off of?

A. Cotton was raised on it.

Q. You know how much?

Mr. Ledbetter: Objected to. Do you kno wyourself or just know what somebody told you?

Witness: What the tenants told me.

Mr. Ledbetter: Objected to; incompetent, irrelevant, and immaterial.

Court: Sustained.

Plaintiffs excepts.

Q. Were you about the place all the time?

A. Yes, sir, I was there close.

Q. Can you estimate about what was raised on it?

Mr. Ledbetter: Object to; too indefinite and not the proper way to prove the rental value of land.

[fol. 46] Court: Overruled.

Defendants except.

A. 20 bales.
Q. That was in 1917?
A. Yes, sir.
Q. Did you raise cotton in 1917?
A. I had cotton raised.
Q. You sold cotton?
A. Yes, sir.
Q. You know the price?
A. About $150.00 per bale.
Q. The rent for 1917 would have been about $750.00 then?
A. Yes, sir.
Q. In 1918 you didn't get any rent?
A. No, sir.
Q. You know what was raised on it that year?
A. Cotton and some oats.
Q. How much cotton?
A. A little over twenty bales—I don't remember exactly.
Q. What was the price of cotton in 1918?
A. It figured close to $200.00 a bale.
Q. Then it would be more than $750.00 rent, that is the rents would be more than $750.00?
A. Yes, sir.
Q. In 1919 up to the time the receiver was appointed who had charge of the land?
A. Mr. Longest.
Q. Prior to the time the receiver was appointed do you remember about when he was appointed?
[fol. 47] A. Yes, sir; I remember the occasion.
Q. Prior to that time had any crop been gathered off the place.
A. They were gathering some crop about the place.
Q. Do you know what was gathered before the receiver got it?
A. Yes, sir.
Q. How much did Mr. Longest get before the receiver took charge of it?
A. He got a bale of cotton and about 300 bushels of corn.
Q. Since the receiver has been appointed he has had charge has he?
A. Yes, sir.
Q. About what was the value of corn down there this year?

A. About a dollar a bushel.

Q. And he got 300 bushels before the receiver took charge?

A. Yes, sir.

Q. And one bale of cotton?

A. Yes, sir.

Q. Was that one of the first bales picked?

A. Yes, sir.

Q. What was it worth?

A. $225.00.

Q. What part of the corn is the land-lord entitled to down there?

A. One third.

Q. The corn that Longest got this year was that all the corn that was taken off the place or was that 300 bushel of rent?

A. That was rent.

[fol. 48] Mr. Ledbetter: Do you know that?

Witness: I know it from the way the corn turned out, the number of rows.

Mr. Ledbetter: Did anyone tell you; did you have it measured?

Witness: No, sir; that is an estimate from the number of rows.

Direct continued:

Q. By the supplemental petition I see W. N. Smith, C. E. Heidelberg and Williams have been made parties, were they tenants under Mr. Longest?

A. Yes, sir, for 1918.

Cross-examination.

By Mr. Ledbetter:

Q. With reference to these rents you speak of; all you know about that is just your estimate?

A. Yes, sir.

Q. That is true as to the cotton and also as to the corn you speak of on the part that Longest had?

A. Yes, sir.

Q. What other people told you about it, you know nothing yourself personally as to the exact amount raised?

A. No, sir, I don't suppose it was weighed.

Q. You didn't count the number of bales off the place, the only information you have as to that is what you received from other people?

A. I know they turned him over one bale of cotton.

Q. As to those 20 bales raised in 1917, did you see that that amount of cotton was raised on that place or count that many?

[fol. 49] Mr. Ledbetter: And in consideration of the fact from the testimony of the plaintiff here he says he has paid George N. Puckett $500.00 for the life estate, if there be a life estate, the defendant, Longest, offers to pay his pro rata of said $500.00 or to wit: $250.00 in the event the court holds there is such a condition as a life estate in this land.

Mr. Green: Plaintiff demurs to that.

Court: Overruled.

Exceptions

Mr. Ledbetter: Now comes the defendant, C. J. Longest and the other parties named as defendants, and demur to the testimony of plaintiff for the reasons and upon the grounds as follows, to wit:

(1) That the testimony as introduced fails to establish facts sufficient to entitle plaintiff to recover.

(2) From the testimony of the plaintiff it is disclosed by the plaintiff himself that George N. Puckett admitted to him about the year 1913 that he had no interest in the land and did not claim any interest therein and thereafter, it is admitted by plaintiff that during the year 1914 or 1915 they divided the rents on the place according to the interest then claimed by the respective parties and from the testimony of the plaintiff it is further shown that not until the fall of 1917 did the plaintiff claim any life estate in the land and that by reason of his acts and conduct and acquiescence of the plaintiff Langford and defendant Longest [fol. 50] that they had these respective interests that the plaintiff is estopped from claiming or asserting any inter-

est as against this defendant, C. J. Longest; and in connection with this the defendant, Longest, asks the Court to consider the fact that Longest now offers in open court and tenders to the plaintiff Langford, the sum of $250.00 being half the consideration paid for the life estate.

Court: I will withhold my ruling on the demurrer at this time.

Mr. Ledbetter: Defendants offer in evidence the depositions of Wm. F. Bourland.

Same are admitted in evidence and are read as follows, to-wit:

Deposition of witness taken to be used in an action pending in the District Court Within and for the County of Jefferson, in the State of Oklahoma, wherein W. C. Langford is plaintiff and C. J. Longest is defendant, in pursuance of the notice hereto attached and at the time and place therein stated, the said W. C. Langford appearing by his attorney, Guy Green, by and through R. A. Hefner, and defendant appearing in person and by his attorney, H. A. Ledbetter.

And thereupon the said defendant produced W. F. Bourland as witness, of lawful age, — being duly sworn, deposeth and saith:

Direct examination.

By H. A. Ledbetter:

Q. What is your name?

[fol. 31] W. F. Bourland.

Q. How old are you, Mr. Bourland?

A. 45 years old.

Q. Are you a member of either the Chickasaw or Choctaw tribe of Indians?

A. Yes, Chickasaw.

Q. How long have you lived in this town, Mr. Bourland?

A. Nine years, last February.

Q. Where did you live prior to living in Ardmore?

A. Petersburg, Oklahoma.

Q. How long did you live at Petersburg?

A. About four years.

Q. Where did you live before that?
A. Tishomingo.
Q. How long did you live at Tishomingo?
A. One or two years, lived in this country all my life.
Q. Mr. Bourland, did you know Mrs. Mary E. Puckett, during her life time?
A. Never saw her in my life.
Q. Did you know her?
A. Didn't know her during her life time.
Q. Did you ever hear of Mary E. Puckett?
A. Not during her life time, the first time I ever heard of here was after she died.

Objected to by R. A. Hefner for the reason that it was hearsay evidence as to the deceased person.

Court: Overruled.
Mr. Green: Plaintiff excepts.

Q. Did you know the husband of Mary E. Puckett?
[fol. 52] A. Yes, sir.
Q. What was his name?
A. George, I think; George E. or something like that.
Q. G. N. Puckett?
A. G. N. Puckett, yes, sir.
Q. Do you know about when Mary E. Puckett died?
A. No, it is all hearsay with me.
Q. From what you understood or heard from others, do you know about when?

Objected to by R. A. Hefner because it is hearsay evidence, and the witness has stated that he didn't know of his own knowledge.

Court: Overruled.
Mr. Green: Plaintiff excepts.

Q. You say you don't know, Mr. Bourland?
A. No, sir.
Q. Mr. Bourland when was the first time that you heard of Mary E. Puckett?
A. It occurs to me that it was in 1904; from what I recollect, it was in the fall of 1904; when G. N. Puckett came out there to Petersburg to see about collecting of some rents that he said he had filed on out there just west

of Petersburg for his deceased wife, Mary E. Puckett, which he claimed was dead.

Q. You say that was on the assumption that he had filed on it as Administrator of his deceased wife?

A. Yes, sir.

Q. Was that land described as the N. ½ of S. ½ of S. E. ¼ and N. ½ of N. E. ¼ of N. E. ¼ and N. E.¼ of N. W. ¼ of N. E. ¼ and S. ½ of N. ½ of N. E. ¼ of Section 14, [fol. 53] Township 7 South, Range 4 West, and the N. ½ of S. E. ¼ and N. ½ of S. E. ¼ of S. E. ¼ of Section 8, Township 7 South, Range 3 West?

A. It lies south of section line about, something like a half to three quarters of a mile west of Petersburg, begins there; I don't remember the calls.

Q. Now at the time this land was filed upon, who had dominion and control of the land?

Mr. Green: Objected to; calling for a conclusion and not the way to prove possession.

Court: Overruled.

Mr. Green: Plaintiff excepts.

A. Well I don't know when it was filed upon. My father held it up to the time of his death on July 15, 1904, up to that time he had it, after his death I had it.

Q. How long prior to 1904, had your father had dominion and control of it?

Mr. Green: Objected to for the same reason.

Court: Overruled.

Mr. Green: Plaintiff excepts.

A. For a good many years, twenty or twenty-five years at least.

Q. Was your father either a member of the Chickasaw or Choctaw tribe of Indians?

A. Chickasaw.

Q. Do you know whether your father parted with his dominion and control of this property to Mary E. Puckett or not?

[fol. 54] Mr. Green: Objected to; calling for a conclusion and not the proper way to prove the conveyance of property.

Court: Overruled.

Plaintiff excepts.

A. Well I don' I know; He never did, the records don't show that he ever did, for my own belief I know he didn't.

Q. After your father died, did the heirs of your father part with the right to this land to Mary E. Puckett or to the administrator, G. N. Puckett?

Mr. Green: Objected to; calling for a conclusion and not the proper way to prove a transfer.

Court: Sustained.

Mr. Ledbetter: Defendants except.

Q. Do you know whether or not the administrator of Mary E. Puckett got permission from your father or the heirs of your father to file on this land?

Mr. Green: Objected to; incompetent, irrelevant, and immaterial.

Court: Overruled.

Mr. Green: Plaintiff excepts.

A. I don't know that he ever did.

Q. How long after the administrator filed on the land was it that you had dominion and control of the land?

A. Appointed 20th day of July, 1904, as executor of my father's estate.

Q. How long after that was it before you got control of it?

A. Immediately.

[fol. 55] Q. How did you hold it, Mr. Bourland?

A. Held it as executor of his estate.

Q. Executor of the estate of your father?

A. Yes, sir.

Q. About how many years did you hold it?

Mr. Green: We move all that testimony be stricken from the record as that is not the way to prove whether the executor had control, the records should show what he had charge of.

Court: Overruled.

Mr. Green: Plaintiff excepts.

A. During that fall it occurs to me that when G. N. Puckett came out there and I found out that it was filed on in the name of Mary E. Puckett I made a contract with him, and held it and collected the rents off of it under him for five years at a stipulated price per annum.

Q. Mr. Bourland, did you subsequently acquire any of the title of the Mary E. Puckett allotment?

A. I did, two shares.

Q. Do you remember from whom you purchased?

A. I bought it from two sons. I forget now what their names were.

Q. Was it David Jasper Cochneuer, son of the deceased allottee, and to refresh your memory I will ask you if you bought from Nicholas Cochneuer?

A. Yes, sir, another son.

Q. Did you subsequently convey the two interests to anyone?

A. Sold to C. J. Longest.

[fol. 56] Q. That the defendant in this case?

A. Yes, sir.

Q. Now, Mr. Bourland, you state you took a lease from Mr. Puckett in the fall of 1904, or the first of 1905 that lease expired then in 1910; how did you hold the land from 1905 up until the time you conveyed the land to Mr. Longest?

A. Well, held it as owner; that is parts of it and when, I had nothing to do with it after 1910, except that portion.

Q. The two fifths?

A. Yes, sir.

Q. Well who had the other three fifths?

A. It was in the heirs.

Q. How did you divide the rents?

A. Didn't divide them, didn't make much.

Q. Well, did the other three heirs have any dominion or control over the land?

A. Not a bit, never have.

Q. What was the consideration for the lease between you and G. N. Puckett?

A. $60.00 a year.

Q. That ran up to 1910?

A. From five years from date, I don't remember the date.

Q. Now then after the lease had expired, you say that you had exclusive dominion and control of the land up until the time you sold the interest you had to Mr. Longest?

A. Yes, sir, I held it in my own right from 1910 after the [fol. 57] lease expired up to November 1914, at which time I conveyed my interest held by myself to C. J. Longest.

Q. Do you know whether or not Mr. Longest then went into possession of the land?

A. Yes, sir, he did, under that deed.

Q. What interest, if any, did G. N. Puckett claim in this land?

A. Why he claimed an interest by courtesy.

Q. That was at the time of the execution of the lease to you?

A. Yes, sir.

Q. Now, after the lease had expired, do you know whether or not he claimed any interest in the land?

A. Along about that time he, well, at different times he wanted to sell his interest to me, and as I recollect he asked eight hundred dollars for it, and I didn't buy it for the reason that at that time it was the opinion of some of the best lawyers that there wasn't any such interest in the husband in case the deceased wife was not in possession at the time the land was filed, and I didn't buy it, and he gave up his contention for it for a good while himself.

Q. You say he gave up his contentions; did you ever hear him, after that, make any contention for any interest in this land?

A. No, not to me.

[fol. 58] Cross-examination.

By Mr. R. A. Hefner:

Q. Mr. Bourland, you stated a while ago that he wanted to sell his interest to you for eight hundred dollars, when was that?

A. Well he and I discussed it at different times after I took the lease from him and it seems to me that it must have been in 1905 we commenced talking about it, and up to the time I decided that the probability was that the law wouldn't sustain any such right of courtesy in the husband after the death of the wife under the facts prevailing in that case.

Q. Well, did he ever tell you he didn't claim any interest in it?

A. He afterwards abandoned any claim.

Q. Did he ever tell you that he had abandoned any claim to this land?

A. Yes, he told me something to that effect right here in Ardmore at that time.

Q. State when that was?

A. I think that must have been; just to fix the date, I don't know whether I could do that, but anyhow it was the last time he and I talked about it; must have been several years ago; five or six years ago, or later than that, I don't —. After he and I were talking.

Q. Did you tell him that he didn't have any interest in it?

A. Yes, and he consulted Messrs. Cruce & Cruce; that is why he came to be discussing it with me. *he was*

[fol. 59] Mr. Ledbetter: "Now come the defendants and request the court to take the case away from the jury and render judgment here in for reasons as follows, to-wit:

That all the pleading and the evidence, that from the pleadings and the evidence it is disclosed that the plaintiff is an owner of an undivided one-half interest in the land and that the defendant, Longest, is the owner of an undivided one-half interest in the land; By reason of the fact that the two respective heirs under whom plaintiff claims title were Indians by blood and the two under whom the defendant claims title were Indians by blood and the only persons who could inherit the land in controversy; That under the evidence it is disclosed that the land at the time it was allotted was in possession and under the control of old man Bill Bourland and that Mary E. Puckett, the patentee, was not in actual possession of the land at the time allotment was made; that under the testimony it is disclosed that for many years subsequent to acquiring the two interests by plaintiff as well as by defendant each party acquiesced in the title of the other and divided the rents upon the basis of the respective interests of the fee; that suit was filed in this court by plaintiff asserting such right and judgment entered thereon, all of which acts on the part of plaintiff and defendant in law constituted an estoppel against the plaintiff to buy out any outstanding title, if such outstanding title does exist, that is the curtesy [fol. 60] right; that this defendant, Longest, having offered to pay for his one-half of the curtesy right, if there

was such thing as a curtesy right, that in equity this defendant would have an equal right to purchase the land with his co-tenant and co-owner, Langford; That from all this testimony it is disclosed that this is *purely* a suit in equity and no issue should be submitted to the jury but that the Court should take the case from the Jury and render such judgment as is equitable between the parties. And for the further reason that the testimony discloses that prior to the purchase of the land by the defendant, Longest, from the two heirs, that G. N. Puckett, the husband of Mary E. Puckett, had declared that he had no interest in the land and the grantee, Langford, so recognized the disclaimer and ownership of G. N. Puckett thereafter and divided the rents upon the place according to the respective interest owned by each in the fee and took a lease from the other supposed outstanding heirs through G. N. Puckett.

Case is withdrawn from the consideration of the Jury to be decided by the Court at a later date when briefs will be submitted by the respective parties.

[fol. 61] In District Court of Jefferson County

[Title omitted]

Journal Entry of Judgment—Filed February 16, 1920

Now on this the 14th day of February 1920, it being a regular judicial day of this Court, the above entitled cause came on for a judgment, the matter having been submitted to the Court, the jury having been waived on the 7th day of January 1920, and the case taken under advisement by the court until this date, and the court being fully advised in the premises does find the issues herein in favor of the plaintiff and against the defendants. The court further finds that the land described in plaintiffs' petition and hereinafter described was allotted by an administrator to Mary E. Puckett, who died prior to statehood in what is now the State of Oklahoma, leaving surviving her husband, G. N. Puckett, one of the plaintiffs herein and a minor child the result of her marriage with the said G. N. Puckett, that

thereafterwards, to-wit; on the 26th day of November, 1917 and prior to the filing of this action the said G. N. Puckett for a valuable consideration conveyed all his right, title and interest in and to said premises to his co-plaintiff, W. C. Langford, and that the said C. N. Puckett with the permission of this court has made himself a party plaintiff, as the grantor of the said W. C. Langford and for the [fol. 62] purpose of protecting his conveyance as above stated. The court further finds that the defendant C. J. Longest, by and through his tenants has been in possession of said lands since the first day of January 1917 and that he at this time unlawfully with holds the possession from the plaintiff, W. C. Langford.

It is therefore, ordered, adjudged and decreed by the Court that the plaintiffs do have and recover from the benefit of the said W. C. Langford of and from said defendants and each of them the said land described as follows, to-wit; N. 2 of S. 2 N. E. 4 and N. 2 of N. E. 4 and N. E. 4 of N. W. 4 of N. E. 4 and S. 2 of N. 2 of N. E. 4 Section 14, Township 7 south, Range 4 West, I. M., and the N. 2 of S. E. 4 and N. 2 of S. E. 4 of S. E. 4 of Section 8, Township 7 south, Range 3 West I. M. for which he may have his writ of possession and assistance. It is further ordered, adjudged and decreed by the court, that said plaintiffs recover of from the defendants the sum of $1,500.00 Dollars, as rents for rents up to the appointment of the receiver herein, for which they may have their execution.

And it is further ordered that the receiver heretofore appointed continue to collect the rents from said premises and to keep the same until further order of this court.

To which action of the court the defendants except and the exception is allowed.

Cham Jones, Judge.

[File endorsement omitted.]

[fol. 63] Mr. Green: We offer in evidence certified application to file Mary E. Puckett, as Plaintiffs' Exhibit one.

Same is admitted in evidence and is as follows, to-wit:

PLAINTIFFS' EXHIBIT No. 1

Department of the Interior, Commission to the Five Civilized Tribes

In the Matter of the Allotment of the Lands of the Choctaw and Chickasaws

Citizens by Blood and Intermarriage, Chickasaw Nation

Testimony of Geo. N. Puckett in the Matter of the Allotment of the Lands of the Choctaws and Chickasaws to Mary E. Puckett (dec'd)

GEO. N. PUCKETT, being first duly sworn, testifies as follows:

Q. What is your name?
A. Geo. N. Puckett.
Q. What is your postoffice?
A. Bokchito.
Q. For whom are you making this application?
A. Mary E. Puckett (Dec'd).
Q. Was the person for whom this application — living on September 25, 1902?
A. Yes.
Q. Is she living now?
A. No.
Q. Has the person for whom you make this application received or applied for an allotment of land in the Creek, [fol. 64] Cherokee or Seminole Nation?
A. No.
Q. How do you represent the person?
A. As Administrator.

Application is made for the following described land:

Homestead Chos. Roll No. 1331

Subdivision	Sec.	Town.	Range	Acres	Appraised value	Cert. No.
N. ½ S. E. ¼	8	7 s.	3 w.	80	200	.....
N. ½ S. E. ¼ S. E. ¼	8	7 s.	3 w.	20	65	.....
N. ½ N. E. ¼ N. E. ¼	14	7 s.	3 w.	20	130	15173
S. E. ¼ S. W. ¼ N. E. ¼	14	7 s.	4 w.	10	65	15172

Application is made for the following described land exclusive of the homestead designated:

S. ½ N. ½ N. E. ¼	14	7 s.	4 w.	40	200	.....
N. ½ S. ½ N. E. ¼	14	7 s.	4 w.	40	200	18271
Total appraised value					$1,040	

Q. Have you been upon these lands and examined them with a view to making this selection?

A. Yes.

Q. Are you fully informed as to the location of the same and the character of the soil?

A. Yes.

[fol. 65] Q. Are there any improvements on this land?

A. Yes.

Q. What do the improvements consist of?

A. One house; 150 acres in cultivation and fenced, balance outside.

Q. Who is the owner of these improvements?

A. Gardner owns the improvements in 7s 3w and he is a non-citizen and W. H. Bourland owns the improvements in 7s 4w.

Q. Have you obtained permission of the above named parties to select the land on which their improvements are located?

A. No.

Q. Does anyone else claim these lands or any part of them?

A. No.

Q. Are there any tribal schools, churches, court houses, jails, or other tribal public buildings located on these lands?

A. No.

Q. Is that portion of the land which you have designated as a homestead suitable for a home?

A. Yes.

Q. Do you in behalf of Mary E. Puckett (Dec'd) accept the above described land in allotment of the lands of the Choctaws and Chickasaws?

A. Yes.

(Signed) Geo. N. Puckett.

[fol. 66] Indian Territory,
Southern District:

I, the undersigned, a notary public in and for said District do certify that the foregoing statements of Geo. N. Puckett were reduced to writing in his presence and were read to and subscribed by him in my presence at the time and place and in the matter mentioned in the caption, he having been first sworn by me that the testimony he should give in the matter should be the truth, the whole truth and nothing but the truth.

Given under my hand and official seal the 15th day of July, 1905.

J. H. Carlock, Notary Public. (Seal.)

Department of the Interior, Office of Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma

This is to certify that I am the officer having the *the* custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said Tribes and that the above and foregoing is a true and correct copy of Chickasaw application for allotment.

Gabe E. Parker, Superintendent, by W. H. Angell, Clerk in Charge Chickasaw Records.

Date: Nov. 22, 1918.

HHB

[fol. 67] Department of the Interior

Approved Jany. 21, 1907.

——— ———, Secretary, by Oliver A. Phelps, Clerk.

Filed for record in the office of Commissioner to Five Civilized Tribes Jany. 28, 1907, at 2 p. m.

Exhibit C in Evidence

Exhibit "C" (Attached to Petition)

State of Oklahoma,
County of Marshall:

Know all men by these presents, that G. N. Puckett, party of the first part, in consideration of the sum of $600.00 and valuable considerations in hand paid the receipt of which is hereby acknowledged does hereby quit claim, grant, bargain, sell and convey unto W. C. Langford, party of the second part the following described real property and premises situate in Jefferson County, State of Oklahoma, to-wit:

All my right, title and interest in and to the N. 2 S. 2 N. E. 4 and N. 2 N. E. N. E. and N. E. N. W. N. E. and S. 2 N. 2 N. E., Sec. 14, Twp. 7 S. R. 4 W., and the N. 2 S. E. 4 and N. 2 S. E. S. E. Sec. 8 T. 7 S. R. 3 W.

Together with all the improvements thereon and the appurtenances thereunto belonging to have and to hold the said described premises unto the said party of the second [fol. 68] part, his heirs and assigns forever.

Signed and delivered this the 26th day of Nov. 1917.

G. N. Puckett.

State of Oklahoma,
County of Marshall:

Before me, a notary public in and for said County and State on this the 26th day of November, 1917 personally appeared G. N. Puckett to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Geo. S. March, Notary Public. My commission expires May 24, 1919.

[fol. 69] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER REVIVING CAUSE—March 20, 1923

And now on this day it is ordered by the court that the motion for revivor of action filed in the above cause be, and the same is hereby sustained, and the above cause is hereby revived in the name of Sallie Langford, Executrix of the estate of W. C. Langford, deceased.

[fol. 70] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

OPINION FILED JULY 7, 1925, WITHDRAWN, CORRECTED, AND REFILED JANUARY 12, 1926

Syllabus

1. The surviving husband of Mary E. Puckett, Choctaw Indian woman who was duly enrolled as such, who had been lawfully married to said husband and of said marriage a child was born, but who died before receiving her allotment, is entitled to curtesy in said lands under the facts stated in the opinion.

Appeal from the District Court of Jefferson County

Hon. Cham Jones, Judge

Ledbetter, Furman & Ledbetter, attorneys for plaintiff in error.

Green & Pruet, attorneys for defendants in error.

Affirmed

[fol. 71] CLARK, J.:

W. C. Langford, as plaintiff, commenced this action in the district court of Jefferson county for possession of certain real estate located in said county and for damages for with-

holding the same against the defendant C. J. Longest. Judgment was rendered for plaintiff, from which defendant appeals.

One Mary E. Puckett was a citizen of the Choctaw Nation. She departed this life in the year 1903, at which time she was the wife of G. N. Puckett. The said Mary E. Puckett, hereinafter referred to as the allottee, and the said G. N. Puckett had been married in due form of law about one year prior to the death of the said Mary E. Puckett. Their residence had been and was near Bokchito, in the south east portion of the Choctaw Nation. To the said Mary E. and G. N. Puckett was born one child, who is now living. The said Mary E. Puckett was duly enrolled upon the final rolls of citizens of the Choctaw Nation prepared under and by virtue of the Curtis Act, as well as the subsequent acts of Congress governing the enrollment and allotment of lands of citizens of the Choctaw and Chickasaw Nations. At the time of the death of the said allottee, no selection had been made of the lands she would have been entitled to receive, had she lived, but in the year 1904, G. N. Puckett, surviving husband of the said allottee, as administrator of her estate, made a selection in the name of the said Mary E. Puckett, of the lands so situated, as herein above indicated, for which certificate of allotment and patent were subsequently issued. The said Mary E. Puckett [fol. 72] was the mother of several children by a former marriage and the defendant Longest was in possession of an undivided part of the premises sued for, by reason of conveyances from certain ones of said children of the said Mary E. Puckett by her former marriage.

The right of recovery of the plaintiff is based upon the fact that he purchased from the said G. N. Puckett the husband, all his interest in said estate. He contends that the interest acquired from the said G. N. Puckett was an estate by curtesy, or an estate in said land for life, and the only question presented for decision in this case is whether or not the said G. N. Puckett inherited in said property an estate by curtesy.

This land was allotted in the name of Mary E. Puckett and vested in her heirs by virtue of the act of Congress, approved July 1, 1902, known as the Supplemental Agree-

ment, governing the selection and devolution of land of this character. Section 22 of said Act provides:

"If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty nine of Mansfield's Digest of the Statutes of Arkansas."

In the case of Shultis vs. McDougal, 95 C. C. A. Reports, page 615, the circuit court of appeals had this act of Congress under consideration. After reviewing the history of the land of the Five Civilized Tribes and the allotment acts for the different divisions thereof, said:

"In order to provide for all members of the tribe who were born subsequent to the beginning of the enrollment, the date of right to enrollment was twice set forward, the statute last quoted fixing the latest date.
[fol. 73] By reason of these facts, when the roll was completed, it contained more names than there were members in being. The roll, however, furnished the basis for the division of the tribal estate. Every person whose name was entered on the roll was entitled to an equal proportion of the tribal land and funds; but by reason of the fact that before actual distribution could be made, and even while the enrollment was in progress, some persons whose names were on the roll would die, the statute made provision for the disposition of the share of the tribal property which would go to them if living. Such a provision was necessary, otherwise there would have been a portion of the tribal property undistributed. It was never the intent, however, either of the tribe or of the federal government to grant to parties having a kinsman who had died before the actual making of the allotment additional lands as a bounty. These kinsmen got all their right to additional lands under and through the enrolled member who had died. Whether the ancestor was actually seized of the property or not in his

lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment. The tribe was not bestowing such land as a bounty, but was simply providing for the right of inheritance.

Congress itself has construed this statute. Section 5 of the act (Act April 26, 1906, c. 1876, 34 Stat. 138) provides:

"That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued, shall issue in the name of the allottee; and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs; and in case any allottee shall die after the restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life; and all patents heretofore issued where the allottee died before the same becomes effective, shall be given like effect."

Here is an express declaration by Congress that the land shall descend to heirs the same as it would have descended if the patent or deed had issued to the allottee during his life, and it is declared that allotments for allottees who have died shall also thus descend. This interpretation by Congress of its own act leaves no room for doubt as to its intent.

In the case of Ned et al. vs. Countiss, 84 Okla. 138, 203 [fol. 74] Pac. 168, this court speaking through Mr. Justice Nicholson in the second syllabus of said opinion says:

"The law of descent in force at the date of the certificate of allotment to a member of the Choctaw Tribe of Indians, is the governing law, and this law relates back to the death of the Indian entitled to take the allotment, and identifies the heirs as of that date, and such law should be applied as if the deceased had received title to his allotment and died seized thereof."

It is contended by the plaintiff in error that the said G. N. Puckett did not take an estate by curtesy in the land

in controversy, for the reason that Mary E. Puckett was not actually seized of this particular tract of land at the time of her death. With this contention we cannot agree.

Mary E. Puckett owned at the time of her death an undivided interest in all of the unallotted land in the Choctaw and Chickasaw Nations, and for the further reason that in construing this statute according to the authorities above cited, we must construe it as though she had died seized and possessed of this land.

It is next contended that chapter 49 of Mansfield's Digest does not specifically provide for curtesy, and that section 22 of the Act of Congress July 1, 1902, provides that said land shall descend according to chapter 49. Section 2534, chapter 49, Mansfield's Digest provides:

"In all cases not provided for by this act, the inheritance shall descend according to the common law."

It was the intention of Congress that land allotted under section 22 of the Act of Congress July 1, 1902, supra, should descend and vest in those persons entitled to receive the same as if the allottee had died seized of said allotment. And it has been so held by this court. This is not a new question, but has been passed squarely on by this court in [fol. 75] the case of Morris et al. vs. Sweeney et al., 53 Okla. 163, 155 Pac. 537, by Mr. Justice Hardy, the first syllabus of which reads as follows:

"The surviving husband of a deceased full-blood Mississippi Choctaw Indian woman who was duly enrolled, but who died before receiving patent to her allotment, is entitled to curtesy in said lands, under the facts stated in the opinion."

In the body of the opinion the court says:

"This deed would convey whatever interest said Robert Sweeney at that time had in and to said lands. His wife having died before receiving her patent, and children having been born alive of the marriage, he would be entitled to an estate by curtesy in the allotment of his deceased wife." Johnson et al. vs. Simpson, 40 Okla. 413, 139 Pac. 129; Armstrong vs. Wood (C. C.) 195 Fed. 137; Pierce et al. vs. Ellis et al., 51 Okla. 710, 152 Pac. 340.

In Cook vs. Childs, 49 Okla. 321, 152 Pac. 88, it was held:

"The surviving widow of a deceased member of the Choctaw Tribe of Indians who died after his enrollment was finally approved, and before selecting his allotment, where an allotment was afterwards selected in his name by an administrator, and patent issued therefor under the provisions of section 22 of the Act of Congress of July 1, 1902, commonly known as the 'Choctaw-Chickasaw Supplemental Agreement', is entitled to dower in the lands selected by such administrator."

In that case the husband died after his enrollment was finally approved, and before selecting his allotment, and the wife was awarded dower in the lands selected by the administrator.

"By parity of reasoning in the instant case, the enrollment of the deceased, Arrah Ann Sweeney, having been finally approved, her lands would descend in the same manner as they would have descended had patent issued during her lifetime, and her surviving husband, Robert Sweeney, would be entitled to curtesy therein, and his deed, being properly executed and approved, would be effectual to convey his interest. This question was not presented nor considered by the court in Criner v. Farve et al., 44 Okla. 618, 146 Pac. 10."

We, therefore, must conclude, in view of the authorities, supra, that G. N. Puckett, husband of Mary E. Puckett, an enrolled citizen of the Choctaw Nation, deceased, acquired [fol. 76] an estate by curtesy in the land involved in this suit, and that his conveyance to the plaintiff W. C. Langford conveyed his interest therein, and that the judgment of the district court for possession of the premises sued for in favor of Langford based upon said conveyance is correct. The same is affirmed.

Nicholson, C. J., Harrison, Mason, Phelps, Lester, Hunt and Riley, JJ., concur.

[fol. 77] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

DISSENTING OPINION

BRANSON, J. (dissenting):

W. C. Langford, as plaintiff, instituted this action in the district court of Jefferson county, for the possession of an undivided interest in certain land located in section 14, township 7 south, range 5 west, and section 8, township 7 south, range 3 west, I. M., and for damages for withholding the same against the defendant, C. J. Longest. Judgment was rendered for the plaintiff, from which the defendant appeals.

One Mary E. Puckett was a citizen of the Choctaw Nation. She departed this life in the year 1903, at which time she was the wife of G. N. Puckett. The said Mary E. Puckett, hereinafter referred to as the allottee, and the said G. N. Puckett had been married in due form of law about one year prior to the death of the said Mary E. Puckett. Their residence had been and was near Bokchito, in the southeast portion of the Choctaw Nation. To the said Mary E. and G. N. Puckett was born one child, who is now living. The said Mary E. Puckett was duly enrolled upon the final rolls of citizens of the Choctaw Nation prepared under and by virtue of the Curtis Act, as well as the subsequent acts of Congress governing the enrollment and allotment of lands of citizens of the Choctaw and Chickasaw Nations. At the time of the death of the said allottee, no selection had been made of the lands she would have been entitled to receive, had she lived, but in the year 1904, G. N. Puckett, surviving husband of the said allottee, as admin- [fol. 78] istrator of her estate, made a selection in the name of the said Mary E. Puckett, of the lands situated as hereinabove indicated, for which certificate of allotment and patent were subsequently issued. The said Mary E. Puckett was the mother of several children by a former marriage, and the defendant Longest was in possession of an undivided part of the premises sued for by reason of conveyances from certain ones of said children of the said Mary E. Puckett by her former marriage.

The right of recovery of the plaintiff is based upon the fact that he purchased from the said G. N. Puckett, the husband, all his interest in said estate. He contends that the interest acquired from the said G. N. Puckett was an estate by the curtesy, or an estate in said land for life, and the only question presented for decision in this case is whether or not the said G. N. Puckett inherited in said property an estate by the curtesy.

It will be noted that the said Mary E. Puckett was not the owner of the land herein sued for at the time of her death, was not in possession of the same, and had no interest therein, and was not seized thereof at any time during her life, but at the time of the death of the said allottee, one W. F. Bourland, a member of the Chickasaw Tribe of Indians by blood, was occupying said premises, then part of the public domain of the Chickasaw Nation, and was the owner of the improvements located thereon, and that the said Mary E. Puckett had no interest therein of any kind or character during her coverture with the said G. N. Puckett, and that the only interest that the said Mary E. Puckett had in any of the lands of the said tribes was by reason of her citizenship in the Choctaw Nation.

[fol. 79] That portion of the Act of Congress approved July 1, 1902, known as the Supplemental Agreement with the Choctaws and Chickasaws, governing the selection and the devolution of land situated as here, is found in section 22, which in the applicable part provides:

"If any person whose name appears upon the rolls prepared as herein provided, shall have died subsequent to the ratification of this agreement, and before receiving his allotment of lands, the lands to which such person would have been entitled, if living, shall be allotted in his name, and shall together with his proportionate share of other tribal property, descend to his heirs, according to the laws of descent and distribution, as provided in chapter 49, Mansfield's Digest of the Statutes of Arkansas."

Thus it will be seen that lands of the public domain of the Choctaw or Chickasaw Nations to be set aside in the name of the deceased Mary E. Puckett, she having died prior to the selection of the land, should descend to her heirs, as provided in chapter 49 of Mansfield's Digest.

In the case of Shultis v. McDougal, 179 Fed. 520, the Circuit Court of Appeals for 8th Circuit makes this syllabus, referring to the statute governing the descent of similar lands in the Creek Nation, which statute is practically identical with section 22, supra:

[fol. 80] "That the word 'descend,' which was technically inapplicable to the situation described, since the decedent would never be seized of the property, was used to indicate the character of the title or estate which passed to the heirs, it not being intended that they should take the property as an additional bounty from the tribe, but by virtue of their heirship, their title being one of inheritance rather than of purchase, the situation being made the same by such provision as though the title had become vested in decedent before his death."

The word "descend" is used to indicate the "character of the title," and in no wise legislate title into a dead person so as to meet the requirements of some particular estate known in law. In other words, the said statute was, in effect, a substitution. Instead of the allottee, those to take who would have been classified as his heirs, under chapter 49, if he had been possessed of such an estate susceptible of descent were declared to be the owners. Said chapter adopted provided the circumstances, conditions, and elements which should exist before certain relatives could take, instead of the decedent. So as to the husband, who might claim an interest in the land allotted to his deceased wife. The disposition of the lands so allotted after the death of the allottee being as provided in chapter 49, supra, the husband would of course take no interest, unless in chapter 49 there is provided the conditions and elements of an estate, etc., the husband could receive in this character of property.

[fol. 81] There is nothing in said chapter 49 of Mansfield's Digest which in any wise refers to the common-law estate of curtesy as such; nor that vests the estate in heirs subject to curtesy. The only provision of said chapter 49 which could in anywise be construed to the effect that curtesy is anywhere contemplated by said chapter is that provision therein which reads:

"Section 2534. In all cases not provided by this act, the inheritance shall descend according to the course of the common law."

This is a virtual declaration that said chapter 49 does not provide for descent according to the course of the common law. Congress, in making this chapter the governing provision as to lands so allotted as is found here, confines the devolution to the express provisions of chapter 49, and not to rules of descent found at common law, and which are not embraced within said chapter 49.

In adopting chapter 49, it was the intent of Congress that the rule of descent should be according to the rule incorporated by express enactment therein, and not what was therein expressly declared not to be provided for by said chapter. The estate by the curtesy existed as to Indian lands, not by reason of section 2534, supra but by reason of the adoption of chapter 30 of Mansfield's Digest, and its being made applicable in Indian lands by the Act of Congress of June 7, 1897. There was therefore, not to be found in the provisions of the descent law specially declared to govern allottments made after the death of the allottee, any provision for the vesting of curtesy in the husband.

[fol. 82] But if said section 2534 is held to have any effect in providing a rule of disposition of such land as herein in question, it requires that resort be had to "the course of the common law." At common law, "an estate by curtesy may exist in an estate of inheritance, and in no other estate." Tiffany on Real Property, vol. 1, page 491. Seizin of an estate of inheritance during coverture being a necessary element of curtesy, this element could not be eliminated except by express legislative enactment.

In the case of McDaniel v. Grace et al., 15 Ark. 466, the elements of a common law estate by the curtesy is thus defined:

"The husband is entitled to curtesy in the wife's real estate, only where there is issue born alive, and a seizin in fact as well as in law, except in the case of waste, uncultivated lands not held adversely; and so the husband would not save curtesy where the land is held by another, adversely, and is the subject of litigation until after the death of the wife."

It is therein further stated:

"By the common law, tenancy by the curtesy is an estate for life, created by the act of the law. When a man marries a woman seized at any time during the coverture of an estate of inheritance in severalty, in coparcenary, or in common, and hath issue by her born alive, and it might by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the husband, he holds the land during his life, and it is immaterial whether the issue be living at the time of the seizin or at the death of the wife, or whether it was born before or after the seizin. Kent, Com. 289."

[fol. 83] In the case of Hackensack Trust Co. v. Tracey et al. (N. J.) 99 Atl. 846, the common-law estate by the curtesy is defined to have had these elements or essentials:

"First, that the wife be seized of an estate of inheritance to which issue of the marriage may possibly succeed as heir of the wife; (2) that the estate be or become, during coverture, an interest in possession; (3) that seizin in deed (less properly styled actual seizin) be obtained during coverture; and (4) that issue be born alive. The transpiring of these four events constitute the contingency upon which an estate by the curtesy arises, that is, vests, in the husband in possession upon his wife's death."

To the same effect is Bogy v. Roberts (Ark.) 2 S. W. 186, Latrell v. Reynolds, 37 S. W., 1051, and Harrod v. Myers, 21 Ark. 600. One of the elements of a common-law estate by the curtesy being that the deceased wife must have been seized of an estate of inheritance, the next consideration necessarily must be whether or not, under the facts in this case there was any seizure of an estate of inheritance of the land in litigation.

At the time of the death of Mary E. Puckett, no land had been selected for her, and the uniform holdings of this court and of the Supreme Court of the United States has been and is that no right, title, interest, or estate vested in the said decedents. Sizemore v. Brady, 235 U. S. 441; Woodward v. de Graffenried, 238 U. S. 248; Franklin v. Lynch 233 U. S. 269; Gritts v. Fisher, 224 U. S. 640; Stephens v. Cherokee Nation, 174 U. S. 445; Cherokee

Nation v. Hitchock, 178 U. S. 294; Delaware Indians v. Cherokee Nation 193 U. S. 127; McKee v. Henry, 201 Fed. 94; Hayes v. Barringer, 164 Fed. 221; Bledsoe v. Wortman, 35 Okla. 261, 129 Pac. 841; Hooks v. Kennard, 28 Okla. 457, 114 Pac. 744; De Graffenried v. Iowa Land & Trust Co., 20 Okla. 687; 95 Pac. 624; Sanders v. Sanders, [fol. 84] 28 Okla. 59, 117 Pac. 338; Barnett v. Way, 29 Okla. 780, 119 Pac. 418.

The plaintiff in this action relies for recovery upon the authority of the case of Morris v. Sweeney, 53 Okla. 163, 155 Pac. 537. This is the only case from this court which in any wise sustains his petition. In this case, it is recited that Ann Sweeney was an enrolled Mississippi Choctaw Indian, who died before receiving patent to her allotment. Robert Sweeney was her husband. The body of the opinion recites this deed would convey whatever interest said Robert Sweeney at that time had in and to said land, and says:

"His wife having died before receiving her patent, and children having been born alive of the marriage, he would be entitled to an estate by curtesy, in the allotment of his deceased wife."

In support of this, the cases of Johnson et al. v. Simpson, 40 Okla. 413, 139 Pac. 129, Pierce et al. v. Ellis, 51 Okla. 710, 152 Pac. 340, and Armstrong v. Wood (C. C.) 195 Fed. 135, are cited. Neither of the cases cited in this opinion supports the conclusion reached therein.

In the case of Johnson et al. v. Simpson, supra, all the elements necessary to vest an estate by the curtesy, as set out hereinabove, were found existing. That is to say, a legal marriage, issue born capable of inheriting actual seizin in the land during coverture, and death of the wife. In the opinion in that case, written by Justice Kane, there was under consideration the estate by curtesy by reason of the Act of Congress of May 2, 1890, which extended and put in force in the Indian Territory the common law as adopted by the state of Arkansas (chapter 20, Mansfield's Digest), with a proviso excepting Indians and their estates, and the Act of June 7, 1897 which provided that such laws shall apply to all persons of the Indian Territory, irrespective of race, and by the Curtis Act of June 28, 1898, "which

[fol. 85] provided that the laws of Indian Tribes should no longer be enforced, the common law as theretofore conditionally extended over the Indian Territory was made applicable to all persons, irrespective of race, and that the estate by the curtesy attach in favor of the husband to all lands of which the wife became seized during coverture, upon the arising of the conditions upon which that estate is based at common law."

In the case of Pierce v. Ellis, supra, one Ninnie Rogers, a Chickasaw Indian by blood, married John Rogers, a white man. Of this marriage, one child was born capable of inheriting, and after receiving her allotment of lands, Nannie Rogers departed this life, leaving surviving her child and her said husband. Upon this state of facts, the court held that he was entitled to an estate by the curtesy. The facts in the case of Armstrong v. Wood, supra, are similar.

It does not appear from the recitation of the facts in the case of Morris v. Sweeney, relied upon by the plaintiff, as to whether selection had been made of Ann Sweeney or not, the opinion merely reciting that the wife having died before receiving her patent, the husband would be entitled to an estate by the curtesy in the allotment of his deceased wife. No selection having been made before the death of the wife, the deceased wife had no allotment, and no estate in any allotment ever vested in her, but her interest was that of a mere float or expectancy to which no right of curtesy as existing at common law could in any wise attach. If it can, therefore, be successfully contended that section 2534, supra, quotes from chapter 49 of Mansfield's Digest of the statutes of Arkansas, be held to draw to said chapter, within the intent and purpose of Congress in adopting the rule in said chapter found, as governing the allotment of lands as herein involved, the rules of the common law, we find one of the necessary and essential elements of an estate by the curtesy was lacking in the land in question at the time of the death of the said Mary E. Puckett, and the rule [fol. 86] of the common law therein referred to would be inapplicable to the condition existing.

In the case of Schultis v. McDougal, supra, the court at great length discussed the fact that the provisions of said chapter 49 are not in toto applicable to the conditions exist

ing in the Five Civilized Tribes and to the descent of the lands of which it was by the act of Congress sought to be applied. The provisions of said chapter 49, as to new acquisitions, was held to have no application to lands allotted to citizens of said tribes, and if the rule of the common law is held by the adoption of said chapter, in so far as it provides for an estate by the curtesy, to have been made a governing rule by said quoted section, certainly Congress did not and could not, by adopting this chapter, alter, modify, or change any of the elements which, under the plain statute adopted, required to exist before an estate by the curtesy would arise. In other words, in adopting this chapter, Congress could not eliminate the element of seizin of an estate of inheritance in the property necessary at common law to create curtesy, when no seizin in fact existed in the person in whose name the lands were set apart after his death.

G. N. Puckett, having no estate by the curtesy in the land allotted in the name of his deceased wife, conveyed no estate therein to the plaintiff, and the judgment of the trial court in his favor was without warrant in law. This cause should be reversed with direction to enter judgment for the defendant.

[fol. 87] In Supreme Court of Oklahoma

[Title omitted]

Order Staying Mandate—January 18, 1926

Upon the application of plaintiff in error, the mandate in the above styled cause is stayed for a period of sixty days from this date pending an appeal of the plaintiff in error from the judgment and decision of this court to the Supreme Court of the United States.

Dated this 18th day of January, 1926.

Geo. M. Nicholson, Chief Justice.

[fol. 88] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—March 9, 1926

And now on this day it is ordered by the court that the mandate in the above cause be stayed until March 30, 1926, pending appeal to the Supreme Court of the United States.

[fol. 89] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 90] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed April 26, 1926

Honorable William R. Stansbury, Clerk of the Supreme Court of the United States:

In accordance with the Revised Rule Ten of this court, I respectfully request that you incorporate in the record to be printed from the transcript now on file with you, only those matters which are specifically set out below, and which matters the appellant feels it necessary to be included in said printed record for a full consideration and determination by the court:

First. The amended petition styled W. C. Langford, et al., v. C. J. Longest, et al.

Second. The amended answer of C. J. Longest.

Third. The testimony of G. N. Puckett.

Fourth. The testimony of W. C. Langford.

Fifth. Demurrer to plaintiffs' evidence.

Sixth. Deposition of W. F. Bourland.

Seventh. Motion to dismiss jury shown in the transcript.

Eighth. Journal entry of judgment in the district court of Jefferson County, Oklahoma.

Ninth. The opinion of the Supreme Court of Oklahoma on the 12th day of January, 1926.

Tenth. The dissenting opinion filed by Justice Branson in the Supreme Court of Oklahoma.

Eleventh. The order of the court reviving the cause in the name of Sallie Langford, as administratrix of the estate of W. C. Langford, deceased.

Twelfth. The two orders of the Supreme Court of Oklahoma staying the mandate.

Thirteenth. The certified copy of application to file.

Fourteenth. The deed from G. N. Puckett to W. C. Langford.

Fifteenth. The certificate of the clerk of the Supreme Court of Oklahoma as to the correctness of the transcript. [fols. 91-95] Sixteenth. Praecipe for transcript to the Supreme Court of Oklahoma.

Seventeenth. Citation of appearance in the Supreme Court of the United States, and acceptance of service thereof.

Eighteenth. The petition for writ of error filed in the Supreme Court of Oklahoma.

Nineteenth. The writ of error issued out of the Supreme Court of the State of Oklahoma.

Twentieth. Order of the Supreme Court of Oklahoma allowing the writ of error and fixing bond.

Twenty-first. Bond filed in the Supreme Court of the State of Oklahoma.

Twenty-second. Allowance of writ of error by the Chief Justice of the State of Oklahoma.

Twenty-third. Assignments of error filed at the time the writ of error was applied for.

Twenty-fourth. Assignments of error and points relied upon filed herein.

H. A. Ledbetter, Attorney for Appellant.

We, the undersigned attorneys for appellees, hereby acknowledge service upon us of the within praecipe for printing of record, this the 23rd day of April, 1926.

Green & Pruet, Attorneys for Appellees.

[fol. 96] C. J. Longest, appellant, in compliance with Rule 10 of this court, presents and files with the clerk of this court, a statement of the points or errors on which he relies for a reversal of the judgment of the supreme court

of the State of Oklahoma, which points and errors so relied upon are as follows:

First. That the supreme court of Oklahoma erred in holding and deciding that the lands described as follows, to-wit, the north half of the south half of the northeast quarter, and the north half of the northeast quarter of the northeast quarter, and the northeast quarter of the northwest quarter of the northeast quarter, and the south half of the north half of the northeast quarter of Section Fourteen (14), Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the southeast quarter of the southeast quarter of Section Eight (8), Township 7 South, Range 3 West, were inherited by G. N. Puckett, the husband of Mary E. Puckett who was an intermarried citizen of the Choctaw Tribe of Indians, and in this connection this appellant alleges and says that the record and proceedings disclose that Mary E. Puckett was an intermarried citizen of the Choctaw Tribe of Indians; that her Indian husband died and she thereafter married G. N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, and in this connection the appellant further alleges and says that the record and proceedings here disclose that the said Mary E. Puckett died more than two years prior to the time that the lands in controversy were selected in her name, and the record and proceedings also disclose that the said Mary E. Puckett was not in possession of the lands at the time of her said death, but that to the contrary the record and proceedings disclose that she was living more than two hundred miles away from said lands, and that at the time of the selection of said lands the record and proceedings disclose that one W. F. Bourland was in possession of said land, and by reason of which the said Mary E. Puckett did not die seized and possessed of said land, and by reason of which no right of curtesy could exist as to the lands in controversy whereby the husband, G. N. Puckett, acquired a curtesy right in and to said lands.

Second. The Supreme Court of Oklahoma erred in holding and deciding that said land descended under Section 22 of the Treaty between the Chickasaws and Choctaws and the United States, ratified September 25th, 1902.

[fols. 97-101] Third. The Supreme Court of the State of Oklahoma erred in holding and deciding that the right of curtesy could exist in a cause like the one at bar, where Mary E. Puckett was not in actual possession of said lands at the time of her said death.

Fourth. The Supreme Court of the State of Oklahoma erred in holding and deciding that a white man could inherit the lands allotted to a member of the Choctaw Tribe of Indians, and also erred in holding and deciding that the right of curtesy exists prior to actual seizin.

Fifth. The Supreme Court of the State of Oklahoma erred in holding and deciding that W. C. Langford, et al., were entitled to possession of said lands.

H. A. Ledbetter, Attorney for Appellant.

We, the undersigned attorneys for appellees, hereby acknowledge service upon us of a copy of the within Points or Errors Relied upon, this the 23rd day of April, 1926.

Green & Pruet, Attorneys for Appellees.

[fol. 102] [File endorsement omitted.]

Endorsed on cover: File No. 31,856. Oklahoma Supreme Court. Term No. 342. C. J. Longest, plaintiff in error, vs. W. C. Langford and G. N. Puckett. Filed April 16, 1926. File No. 31,856.

SUPREME COURT OF THE UNITED STATES

ORDER DISMISSING WRIT OF ERROR—May 31, 1927

In Error to the Supreme Court of the State of Oklahoma

On consideration of the motion to dismiss the writ of error in this cause,

It is now here ordered that the writ of error in this cause be, and the same is hereby, dismissed as improvidently allowed.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1927

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Supreme Court of the United States

October Term, 1926.

Number 342.

C. J. LONGEST, APPELLANT,

vs.

W. C. LANGFORD AND G. N. PUCKETT, APPELLEES.

BRIEF OF APPELLANT.

STATEMENT OF PLEADINGS.

The appellees filed their suit in the District Court of Jefferson County, Oklahoma, against C. J. Longest, who is the appellant here, which suit was one in ejectment and was for the possession of the following described lands, to wit:

> The north half of the south half of the northeast quarter, and the north half of the northeast quarter of northeast quarter, and northeast quarter of northwest quarter of northeast quarter, and south half of north half of the northeast quarter of Section 14, Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the

southeast quarter of the southeast quarter of Section 8, Township 7 South, Range 3 West.

Appellees derived their title to the lands by virtue of the following facts: That said land was patented to Mary E. Puckett, an intermarried citizen of the Choctaw Tribe of Indians, who died prior to the admission of the State into the Union, and at a time when Mansfield's Digest of the State of Arkansas was in force in the Indian Territory; that at the time of her death she left surviving her her husband George N. Puckett, who is not a member of any Indian Tribe, but is a white citizen of the United States; that Mary E. Puckett at the time of her death left surviving her several children, some of whom were children from Cocheuner, her first husband and who was a member of the Choctaw Tribe of Indians by blood; and some of the children being the issue born to the marriage between herself and her white husband, George N. Puckett (see page 10 of transcript). The appellant here, who was defendant in the trial court in Jefferson County, Oklahoma, claimed title to the land by virtue of conveyances from the children born to the marriage between Mary E. Puckett and her said Choctaw Indian husband, and denied the title of the appellees on the grounds that at the time of the death of the said Mary E. Puckett she was not in possession of the lands, that she had not selected the same in allotment, and by reason of which the appel

lees were not entitled to the possession of the lands, and this for the good and sufficient reason that no curtesy right existed in the white husband, George N. Puckett, appellee Langford's grantor, for that no title and no inheritable right in the lands of the Chickasaw and Choctaw Nation was vested in Mary E. Puckett at the time of her death, and she, the said Mary E. Puckett, not being actually seized with the land at the time of her death, George N. Puckett, her husband, acquired no curtesy right therein (see page 12 of the transcript).

STATEMENT OF EVIDENCE.

This evidence in the record discloses that Mary E. Puckett died in 1903, near Bokchito, Indian Territory, which is now Bokchito, Oklahoma; that prior to her death she had married a Choctaw Indian by blood by the name of Cocheuner; that from the marriage between Mary E. Puckett and Cocheuner there were several children born. The testimony shows that George N. Puckett was appointed administrator over the estate of his deceased wife, Mary E. Puckett, and that as administrator of such estate he selected and filed upon the lands in controversy in 1905. The testimony further shows that appellant procured deeds from some of the children from the marriage between Mary E. Puckett and Cocheuner, and went into possession of the land. The testimony also shows that appellee W. C. Langford procured deeds from some of

the children of the marriage between Mary E. Puckett and George N. Puckett, and perhaps from some of the children from the marriage between Mary E. Puckett and Cocheuner. The testimony shows also that the only deed relied upon by appellee W. C. Langford was the deed from George N. Puckett. An objection was made to the introduction of this deed, and the objection was overruled. At the conclusion of the testimony in the trial court a demurrer to the evidence was interposed, overruled and exceptions taken.

At page 43 of the transcript is disclosed appellees' exhibit No. 1, which is a certified copy of the application to file on the lands in controversy by George N. Puckett as administrator of the estate of his deceased wife, Mary E. Puckett. This application discloses that George N. Puckett, as such administrator, did not acquire permission from the persons in possession of the land to file thereon. This application to file upon the land is sworn to on July 15th, 1905.

This constituted the testimony on the part of the appellees in the trial court, which is shown commencing at page 24 of the transcript.

The testimony of appellant, defendant in the trial court, is shown commencing at page 34 of the transcript. This testimony shows that George N. Puckett, in the fall

of 1904, came out to Petersburg, which is close to the lands in controversy, to see about collecting rents from the land which he had selected as administrator of his deceased wife, Mary E. Puckett, and being the lands in controversy. The testimony shows that the father of W. F. Bourland was in possession of the land and had dominion and control of it until July 15th, 1904, and had had possession and control of the same continuously for twenty or twenty-five years prior thereto, and that he was holding such possession as a member of the Chickasaw Tribe of Indians; that old man Bourland did not part with the right to said lands, nor did he give George N. Puckett as administrator of the estate of Mary E. Puckett, deceased, a right to select and file on said land. The testimony shows that W. F. Bourland held the land as a part of his father's estate during the fall of 1904, and thereafter the said W. F. Bourland acquired conveyances from two of the children of Mary E. Puckett and Cocheuner, one of the children being David Jasper Cocheuner, and that W. F. Bourland thereafter conveyed such title as he acquired to the appellant C. J. Longest; that the possession of Bourland continued up to 1910, which possession by W. F. Bourland was by a lease from George N. Puckett executed in the fall of 1904, but that appellant C. J. Longest had dominion and control of the interest acquired by him by virtue of the deeds aforesaid.

This constituted the testimony on behalf of appellant, defendant in the trial court. At the conclusion of the testimony motion was made by appellant, defendant in the trial court, for judgment in his behalf, which motion was overruled (see transcript, page 40). On the 14th of February, 1920, the district court of Jefferson County, Oklahoma, entered its judgment in favor of appellees and against appellant (see transcript, page 41).

From the judgment of the district court of Jefferson County an appeal was prosecuted to the Supreme Court of the State of Oklahoma, and the judgment of the trial court was affirmed, as is shown by the opinion of the Supreme Court of the State of Oklahoma shown at page 47 of the transcript, and which will be found reported in 114 Okla. Reporter 50, 242 Pac. Reporter 569, the opinion being by Mr. Justice Clark of the Supreme Court of Oklahoma. There was a dissenting opinion written by Mr. Justice Fred P. Branson, who is at the present time Chief Justice of the Supreme Court of Oklahoma, the dissenting opinion being shown at page 53 of the transcript. From the decision of the Supreme Court of Oklahoma an appeal is prosecuted to this court, wherein is assigned as error, the following:

"First: That the Supreme Court of Oklahoma erred in holding and deciding that the lands described as follows, to wit, the north half of the south half of the northeast quarter, and the north half of the northeast quarter

of the northeast quarter, and the northeast quarter of the northwest quarter of the northeast quarter, and the south half of the north half of the northeast quarter of Section Fourteen (14), Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the southeast quarter of the southeast quarter of Section Eight (8), Township 7 South, Range 3 West, were inherited by G. N. Puckett, the husband of Mary E. Puckett, who was an intermarried citizen of the Choctaw Tribe of Indians, and in this connection this plaintiff in error alleges and says that the record and proceedings disclose that Mary E. Puckett was an intermarried citizen of the Choctaw Tribe of Indians; that her Indian husband died and she thereafter married G. N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, and in this connection the plaintiff in error further alleges and says that the record and proceedings here disclose that the said Mary E. Puckett died more than two years prior to the time that the lands in controversy were selected in her name, and the record and proceedings also disclose that the said Mary E. Puckett was not in possession of the lands at the time of her said death, but that to the contrary the record and proceedings disclose that she was living more than two hundred miles away from said lands, and that at the time of the selection of said land the record and proceedings disclose that one W. F. Bourland was in possession of said land, and by reason of which the said Mary E. Puckett did not die seized and possessed of said land, and by reason of which no right of curtesy could exist as to the lands in controversy whereby the husband, G. N. Puckett, acquired a curtesy right in and to said lands.

"Second: The Supreme Court of Oklahoma erred in holding and deciding that said land descended under Section 22 of the Treaty between the Chickasaws and Choctaws and the United States, ratified September 25th, 1902.

"Third: The Supreme Court of the State of Okla-

homa erred in holding and deciding that the right of curtesy could exist in a cause like the one at bar, where Mary E. Puckett was not in actual possession of said lands at the time of her said death.

"Fourth: The Supreme Court of the State of Oklahoma erred in holding and deciding that a white man could inherit the lands allotted to a member of the Choctaw Tribe of Indians, and also erred in holding and deciding that the right of curtesy exists prior to actual seizin.

"Fifth: The Supreme Court of the State of Oklahoma erred in holding and deciding that W. C. Langford et al. were entitled to possession of said lands."

The testimony in this record is undisputed that Mary E. Puckett was married to a Choctaw Indian by blood prior to her marriage to George N. Puckett; that George N. Puckett was a white citizen of the United States and not a member of any Indian Tribe; that Mary E. Puckett died in 1903, and that George N. Puckett as administrator of said estate, did not select and file upon the lands in controversy until July, 1905; that old man Bourland was in possession of the land in controversy for more than twenty years prior to the selection of the land by George N. Puckett as administrator of the estate of Mary E. Puckett; that Mary E. Puckett at the time of her death had never been upon the lands in controversy, never claimed or asserted any dominion or control of the same, and that she lived a distance of more than one hundred fifty miles from the land at the time of her death. The testimony also shows that the only title that appellees as-

sert is a common law curtesy right in the land. From the foregoing statement, which will not be controverted, the court can readily see that the sole and only question in this cause is whether or not George N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, acquired a common law curtesy right in the land allotted in the name of his deceased wife, Mary E. Puckett, an intermarried citizen of the Choctaw Tribe of Indians, who had died more than twelve months prior to the time that George N. Puckett as administrator of said estate had selected and filed on the land.

ASSIGNMENTS OF ERROR.

Instead of arguing each assignment of error separately, we will present to the court the following:

I.

Mary E. Puckett at the time of her death had no right, title, estate or interest in the lands in controversy.

II.

George N. Puckett acquired no curtesy right in the lands in controversy, by reason of the fact that Mary E. Puckett was not seized with said land at the time of her death.

III.

A white citizen of the United States, such as was George Puckett, could not inherit land selected and allotted to a member of the Choctaw Tribe of Indians prior to the admission of Oklahoma into the Union.

IV.

The right of curtesy does not come by descent, but comes by virtue of the marriage relation.

ARGUMENT.

As to our first proposition, which is as follows:

"Mary E. Puckett, at the time of her death, had no right, title, estate or interest in the lands in controversy,"

we desire to call the court's attention to the case of *Hooks v. Kennard*, 28 Okla. 457, 114 Pac. 744. At page 463 of the Oklahoma Reports, *supra*, it is said:

> "This court has held in several cases that the selection of and the filing upon an allotment of land was the inception and beginning of the title of the

allottee or his heirs, and that, when the patent which is only the evidence of title, is issued, it relates back to the inception of the title. *De Graffenreid* v. *Iowa Land & T. Co.*, 20 Okla. 687, 95 Pac. 624; *Godfrey* v. *Iowa Land & T. Co.*, 21 Okla. 293, 95 Pac. 792; *Irving et al.* v. *Diamond*, 23 Okla. 325, 100 Pac. 557."

See, also:

McKee v. *Henry*, 201 Fed. 74.
Brann v. *Bell*, 192 Fed. 427.
Hayes v. *Barringer*, 168 Fed. 221.

In this connection, permit us to say that the mere right of the allotted land of the Choctaw Nation by Mary E. Puckett during her lifetime was not a vested right before it was exercised, because it was within the power of Congress to withdraw the right to allot at any time Congress saw fit so to do.

See:

Gritts v. *Fisher*, 224 U. S. 640.
Stephens v. *Cherokee Nation*, 174 U. S. 445.
Cherokee Nation v. *Hitchcock*, 187 U. S. 294.
Hayes v. *Barringer*, 168 Fed. 221.
Wallace v. *Adams*, 143 Fed. 716.
Woodbury v. *United States*, 170 Fed. 302.

Actual allotment of the land was necessary to segregate and vest an individual member's interest in the lands of the tribe. See *Choate* v. *Trapp*, 224 U. S. 665.

See, also:

Sizemore v. *Brady*, 235 U. S. 441.
Woodward v. *DeGraffenreid*, 238 U. S. 284.

Franklin v. *Lynch*, 233 U. S. 269.
Mullen v. *Gardner*, 250 U. S. 590.
Gritts v. *Fisher*, 224 U. S. 640.
Bledsoe v. *Wortman*, 35 Okla. 261, 129 Pac. 841.
Sanders v. *Sanders*, 28 Okla. 59, 117 Pac. 338.
Barnett v. *Way*, 29 Okla. 780, 119 Pac. 418.

Now, having demonstrated and shown to the court by the decisions of the Supreme Court of Oklahoma and of this court that no vendible interest in the particular land in controversy was vested in Mary E. Puckett until a selection had been had, although she was a member by intermarriage of the Choctaw Tribe of Indians, we then come to the question as to whether or not her husband, a white citizen of the United States, acquired a curtesy right in the lands in controversy, where the record discloses undisputably that Mary E. Puckett had died more than twelve months prior to the selection of the land, and when the record discloses undisputably the fact that she at no time had ever been in possession of the lands prior to her death, which brings us to our second proposition, which is:

"George N. Puckett acquired no curtesy right in the lands in controversy by reason of the fact that Mary E. Puckett was not seized with said land at the time of her death."

The one basis of an estate by curtesy in the Indian Territory is derived through the act of Congress of May 2nd, 1890 (26 Stat. L. 81), putting in force in the Indian

Territory certain chapters of Mansfield's Digest of the Statutes of Arkansas, among the number being Chapter 20 of Mansfield's Digest, included in Section 566 thereof, which is as follows:

> "The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British parliament in aid of or to supply the defect of the common law made prior to the fourth year of James the First (that are applicable to our own form of government), of a general nature and not local to that kingdom, and not inconsistent with the Constitution and laws of the United States or the constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the general assembly of this state."

Under the common law there was no curtesy unless the wife was seized in deed, meaning possession in fact, actual possession, claiming the freehold interest—*seizin in law not being sufficient*—that is, mere right of action for possession under the common law was not sufficient.

> Greenleaf's Cruise on Real Property, Vol. 1, page 149.
> Tiffany on Real Property, Vol. 1, page 493.

Tiffany on Real Property, Vo. 1., page 491, says:

> "An estate by curtesy may exist in an estate of inheritance, and in no other estate."

We call the court's special attention to the case of *McDaniel* v. *Grace*, 15 Ark. 483, which is on all fours with the case at bar.

We also call the court's attention to the case of ***Hampton*** v. *Cook*, 64 Ark. 353, 62 Am. St. Rep. 194.

We also call the court's attention to the case of *Neelly* v. *Lancaster*, 47 Ark. 175, reported in 58 Am. St. Rep. 752.

We also call to the attention of the court the case of *Owens* v. *Jabine*, 115 S. W. 383 (Ark.), and to this case we wish to call the court's most special attention.

We also call the court's attention to the case of *Harrod* v. *Myers*, 21 Ark. 600.

A curtesy estate is one granted by mere favor of the law of England and has no basis in natural or moral right.

See:

Heath v. *White*, 5 Conn. 228-236.
Day v. *Burgess*, 202 S. W. 911.

The husband is not entitled to curtesy in an expectancy of the deceased wife, nor to curtesy in a mere float or cause of action or privilege or preference right.

17 Corpus Juris 425 says:

"The husband cannot be tenant by the curtesy of a remainder or reversion of his wife expectant on an outstanding particular freehold estate which did not determine during coverture; and this doctrine applies as well to equitable as to legal estates."

This doctrine is particularly emphasized in the case of *McDaniel* v. *Grace*, 15 Ark. 465.

See, also, *Quinn* v. *Ladd*, 39 Ore. 261, 59 Pac. 457. To this case we invite the court's most careful attention.

See, also, *Crowley* v. *Grant*, 127 Pac. 28. Also, *Stoddard* v. *Gibbs*, 23 Fed. Cases No. 13468, this latter opinion having been written by Justice Story, and to which we invite the court's most careful attention. In the opinion written by Justice Story it will be observed that Justice Story goes into all common law authorities, and common law authorities control in matters arising in Indian Territory with respect to curtesy.

In 2 Blackstone 127 it is said:

> "The seizin of the wife must be an actual seizin, or possession of the lands; not a bare right to possess, which is a seizin in law, but an actual possession, which is a seizin in deed. And therefore a man shall not be a tenant by the curtesy of a remainder or reversion."

See, also, the case of *Maupin* v. *Maupin*, 110 S. W. 840. Also, *Parsons* v. *Justice*, 174 S. W. 725. These two cases being from Kentucky.

See, also, *In re Dixon*, 72 S. E. 71, which is from the Supreme Court of North Carolina.

Also, *Sentill* v. *Robeson*, 55 N. C. 310.

See, also, *Evans* v. *Morris*, 136 S. W. 408, which is from the Supreme Court of Missouri.

We also call the court's special attention to the case

of *The Lessee of Mercer et ux* v. *Selden*, 42 U. S. 37, 11 Law. ed. 38, syllabus four being as follows:

> "The general rule of law is, that there must be an entry during coverture, to enable the husband to claim a tenancy by the curtesy."

In the body of the opinion, at page 45 of the Law Edition, it is said:

> "In 1 Coke on Litt., 29, ch. 4, sec. 35, it is said: 'Tenant by the courtesy of England is, where a man taketh a wife seized in fee-simple, or a fee-tail general, or seized as heir-in-tail special, and hath issue by the same wife, male or female, born alive, albeit the issue after dieth or liveth, yet if the wife dies, the husband shall hold the land during his life by the laws of England.'
>
> "'And first, of what seisin a man shall be tenant by the courtesy. There is in law a two-fold seisin, viz., a seisin in deed and a seisin in law. And here Littleton intendeth a seisin in deed, if it may be attained unto, as if a man dieth seized of lands in fee simple, or fee-tail general, and these lands descend to his daughter, and she taketh a husband and hath issue, and dieth before any entry, the husband shall not be tenant by the courtesy; and yet in this case she had a seisin in law; and if she or her husband had during her life entered, he should have been tenant by the courtesy.'
>
> "The wife at common law was endowable where there has been no actual possession, and the reason is, that during coverture she could not take possession of the lands of her husband. *But actual seisin was necessary to enable the husband to claim as tenant by the courtesy. This rule was not inflexible.*"

We also call the court's special attention to the case

of *J. H. Allen et al.* v. *Helena Hanks*, 136 U. S. 300, 34 Law. ed. 414, where, at page 418 of the Law Edition, it is said:

> "When the Constitution of 1868 was adopted, the appellee's husband could have no estate by the curtesy in lands not then owned by her; for, as was said by the Supreme Court of Arkansas in *McDaniel* v. *Grace*, 15 Ark. 465, 483, except when from the nature and circumstances of the real property of the wife, she may be regarded as constructively in possession (as where it consists in wild lands, or it is impossible or impracticable to enter upon them), marriage, actual seisin of the wife, issue, and death of the wife, are all requisite to create an estate by the curtesy; and that the husband was not entitled to his curtesy, according to the common law, unless the wife was seized in fact and in deed. *Mercer* v. *Sheldon*, 42 U. S. 1 How. 37, 54 (11:38, 45); *Davis* v. *Mason*, 26 U. S. 1 Pet. 503, 507 (7:239, 240), 4 Kent. Com. 29, 30."

It is by the Arkansas Statute putting in force the common law that the right of curtesy exists in the case at bar, if any at all. We have cited cases from the Supreme Court of Arkansas, the various states of the Union, by the text book writers, and by this Court, holding that where actual seizin does not exist no right of curtesy exists, and we therefore respectfully submit under this proposition the decision of the Supreme Court of Oklahoma should be reversed.

As to our third proposition, which is as follows:

> "A white citizen of the United States such as was George N. Pucket, could not inherit land selected and

> allotted to a member of the Choctaw Tribe of Indians prior to the admission of Oklahoma into the Union,"

we call the court's attention to the case of *Gillum* v. *Anglin*, 44 Okla. 684, 145 Pac. 1145, where in syllabus one is the following:

> "Upon the death of mixed blood minor children of the Choctaw Tribe of Indians, the fee in their allotments ascend to the parent of tribal blood, and not the parent who has become a citizen of the tribe by virtue of an intermarriage."

It will be noted in the body of the opinion that Mr. Justice Harrison quotes with approval the case of *Shulthis* v. *McDougal*, 170 Fed. 520, where the identical question was before the Eighth Circuit Court of Appeals. It will also be noted that the case of *Pigeon* v. *Buck*, 38 Okla. 101, is quoted with approval. Also the case of *Roberts* v. *Underwood*, 38 Okla. 376. The latter two cases were appealed to the Supreme Court of the United States and there affirmed (see *Pigeon* v. *Buck*, 237 U. S. 386, 59 Law. ed. 1007).

See, also, the case of *McDougal* v. *McKay*, 237 U. S. 372, 59 Law. ed. 1001, where in the body of the opinion, at page 1006, this language is used:

> "His father was the only parent through whom he derived his right, and to the father the land should pass."

And on the same page will be found the following language:

"As the father, George Franklin Berryhill, was of Creek blood, and the mother not, he took a fee simple title to all the land in question. If both parents had been of Creek blood and duly enrolled, each would have taken one-half."

Now, in the case at bar, Mary E. Puckett, the intermarried citizen of the Choctaw Tribe of Indians, had as her first husband, as shown by the transcript, an Indian by blood, and from this marriage children were born. Mary E. Puckett acquired her right as a member of the tribe through her Indian husband, the Indian husband having died, and thereafter Mary E. Puckett married G. N. Puckett, a white man. Mr. Justice Clark in the writing of the opinion in the case at bar, holds that the estate of Mary E. Puckett was cast by descent to the white husband. This, we say, under the decisions cited *supra*, is wrong, for this Court and the Supreme Court of Oklahoma have held that a white citizens cannot inherit under the Arkansas law the land of an Indian by blood.

We wish to call the court's special attention to the case of *In re Estate of Hawkins*, 97 Okla. 195, 223 Pac. 396, where the question arose as to how and in what way an intermarried citizen of the Choctaw Tribe of Indians acquired her right to allotted lands, and how and in what way the land would descend upon the death of the interried citizen, where there was no issue born to the marriage. After reviewing the various provisions of the treaties between the Chickasaws and Choctaws and the United

States, and the decisions of the Circuit Court of Appeals in *Shulthis* v. *McDougal*, *supra*, the Supreme Court of Oklahoma held that the intermarried citizen acquired the allotment from the husband who was of Indian blood; that it was neither an ancestral estate nor a new acquisition; that upon the death of the white, intermarried citizen, the estate would not descend to the white citizen heirs, and that the whole estate would descend to the husband who is an Indian by blood. In other words, it would descend to the Indian by blood to the exclusion of the white heirs.

Now, in the case at bar, this appellant acquired his right from the child of the first marriage and who was of the blood of the ancestor from whom Mary E. Puckett acquired this estate. In other words, Mary E. Puckett acquired the land in controversy from her Indian husband, and the Indian husband being dead, leaving the children by Indian blood, who would inherit to the exclusion of G. N. Puckett. The white husband of Mary E. Puckett does not inherit this property, and when Mr. Justice Clark in his opinion said, in effect, that the right of curtesy came by descent, it is in direct conflict with the decisions of the courts *supra*, for the good and sufficient reason that a white citizen cannot inherit the lands of a member of the tribe prior to the admission of the State of Oklahoma into the Union. We therefore respectfully submit under our third proposition that the judgment of the trial court should be reversed and judgment here entered.

As to our fourth proposition, which is as follows:

> "The right of curtesy does not come by descent, but comes by virtue of the marriage relation,"

we beg to call the court's attention to the case of *Condren v. Marlin*, 113 Okla. 259, 241 Pac. 826, in which Mr. Justice Phelps of the Supreme Court of Oklahoma says at page 261:

> "Therefore, the real question in this case is: Does the estate by the curtesy vest in the husband by descent, or is it an estate acquired by virtue of the marriage relation?"

After putting the question, and after quoting from the various text books and from the various decisions of the various states of the Union, as well as the Supreme Court of the United States, at page 262, says:

> "Therefore, after a careful examination of the authorities cited in the briefs, together with other available authorities, it is our conclusion that, as applied to the facts in this case, the estate by the curtesy does not vest in the husband by descent, but is an estate acquired by virtue of the marriage relation."

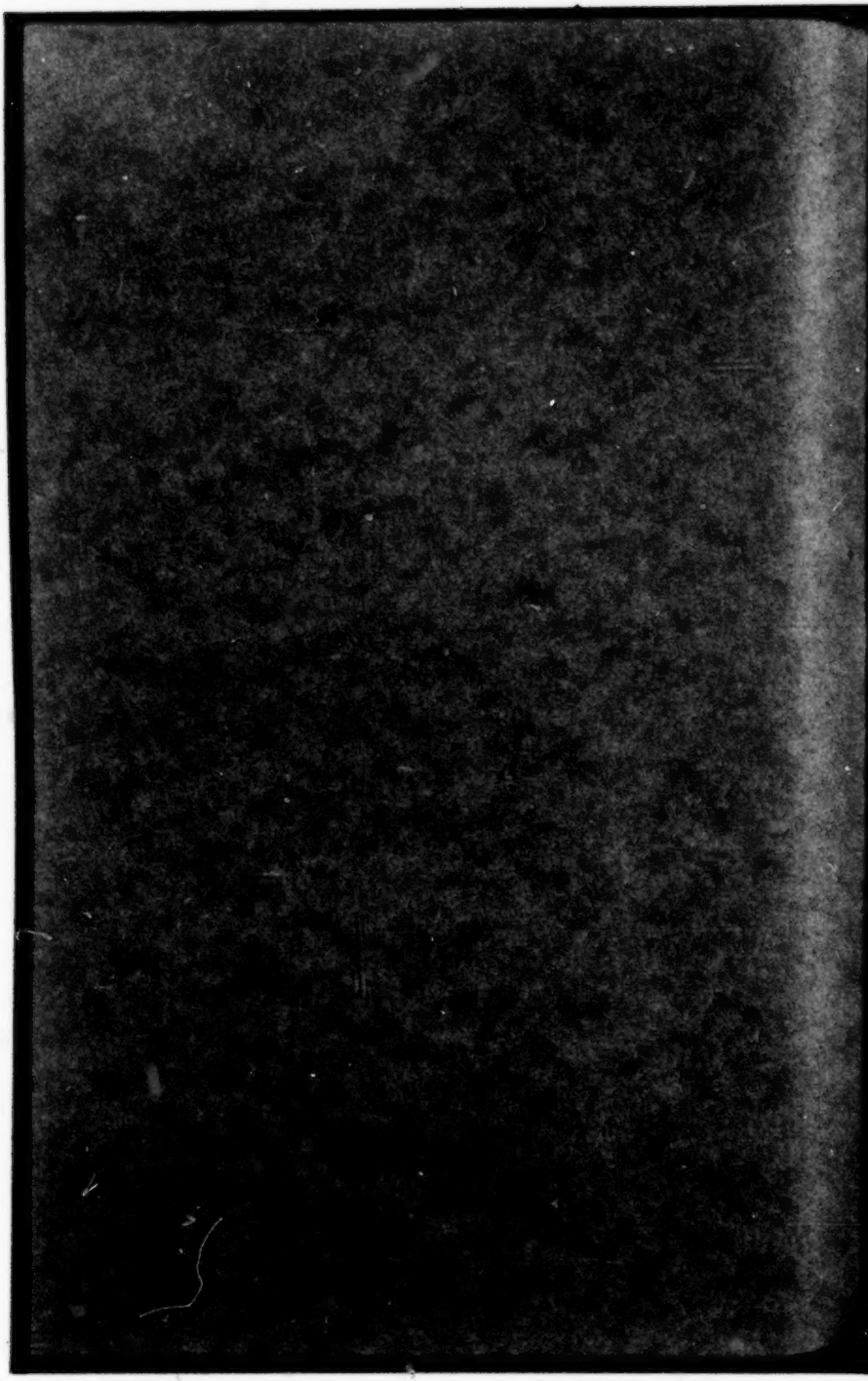
We wish to call to the court's attention the real question in the case of Condren v. Marlin, which was this: it was being contended by one of the parties that the estate by curtesy came by descent and the husband being a white person could not take the estate by curtesy, following the line of decisions quoted herein on our third proposition, but the Supreme Court of Oklahoma said that the estate by curtesy was not cast by descent and by reason of which

the white husband was entitled to curtesy in those cases where the four prerequisites were in existence.

Now, in the case at bar Mr. Justice Clark of the Supreme Court of Oklahoma has said that the estate was cast by descent, and in his opinion in the case at bar he does not refer to the case of Condren v. Marlin, nor is the same mentioned. If the estate is cast by descent, then we apply the doctrine laid down in the case of *Gillum* v. *Anglin*, 44 Okla. 684, 145 Pac. 1145; *Stalcup* v. *Mullen*, 49 Okla. 543, 153 Pac. 868; *Pigeon* v. *Buck*, 237 U. S. 386, 38 Okla. 101, 131 Pac. 1083; *McDougal* v. *McKay*, 59 Law. ed. (U. S.) 1001; *Roberts* v. *Underwood*, 38 Okla. 376, 132 Pac. 673, holding that a white citizen of the United States could not inherit the land of a member of the tribe prior to the admission of Oklahoma into the Union.

We respectfully submit that the judgment of the Supreme Court of Oklahoma should be reversed and judgment here entered in favor of this appellant.

H. A. Ledbetter,
H. E. Ledbetter,
Counsel for Appellant.



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Supreme Court of the United States

October Term, 1926.

NUMBER 342

C. J. LONGEST, APPELLANT,

vs.

W. C. LANGFORD AND G. N. PUCKETT,
APPELLEES.

MOTION TO DISMISS.

Comes now the defendants in error, appellees, and move this Honorable Court to dismiss this cause for want of jurisdiction to consider the same. The grounds for this motion are:

I. This is not a cause which plaintiff in error is entitled to have considered by the United States Supreme Court upon a writ of error.

II. This cause does not involve a substantial Federal question such as to entitle plaintiff in error, appellant, to a review by the Supreme Court of the United States.

I. This is not a cause which appellant is entitled to have considered on a writ of error.

This cause is brought here upon a writ of error to the Supreme Court of Oklahoma (Tr. R., pp. 7-8). This cause was filed in this Court during the year 1926, at which time

the jurisdiction was governed by the Act of February 13, 1925 (43 St. 936), amending Section 237 of the judicial code as follows:

"Sec. 237: a. A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or a statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State Court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

"b. It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review

under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied Nothing in this paragraph shall be construed to limit or detract from the right to review by writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

"c. If a writ or error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the writ or error was allowed shall be regarded and acted on as a petition for certiorari and as if fully presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed; provided; that where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 1010 of the Revised Statutes."

This case does not involve the validity of a treaty or a statute of the United States or the validity of a statute of a state. Appellant in his brief (p. 12) admits that the Act of Congress of May 2, 1890 (26 St. L. 81), put in force in the Indian Territory certain chapters of Mansfield's Digest of the Statutes of Arkansas, among the number being Chapter 20, which provided for the application of the common law in the Indian Territory. Likewise it is not controverted that section 22 of the Act of Congress July

1, 1902, provided for the devolution of land, in accordance with Chapter 49 of Mansfield's Statutes of Arkansas. The only contention is that Chapter 49 did not provide for curtesy. There is no question presented of the validity of a treaty or statute of the United States with an adverse decision thereon or the validity of a state statute on the grounds of its being repugnant to the Constitution, treaties or laws of the United States with a decision in favor of its validity. The question, being one of the interpretation of the Arkansas statute of descent and distribution, is obviously not a case of which this Court will take jurisdiction upon a writ of error.

II. This case does not contain a substantial Federal question.

Should this Court hold that the amendment to the Judicial Code above quoted permits the court to consider a writ of error as a petition for certiorari, the case does not contain a substantial Federal question, and no reasonable ground exists for granting certiorari.

Reference to the assignments of error (Tr. R. p. 5), propositions argued in brief of appellant (brief p. 10) and answer of appellant in the trial court (Tr. p. 12), clearly indicate that the only question involved is the proper construction of the Arkansas law of descent and distribution. The opinion of the Supreme Court of Oklahoma (Tr. R. p. 47) and the dissenting opinion of Mr. Justice

Branson (Tr. R. p. 53) clearly indicate that the real question decided was whether Chapter 49 of Mansfield's Digest of the Statutes of Arkansas provided for an estate by curtesy, under the facts stated in the opinion.

Counsel for appellant (brief, p. 12) states that the basis fof curtesy in the Indian Territory was the act of Congress, May 2nd, 1890 (26 Stat. L. 81), which put in force certain of the laws of Arkansas, among the number being Chap. 20 of Mansfield's Digest (a portion of Sec. 566 is quoted in brief at page 13). Section 22 of the Act of Congress July 1, 1902, ratified September 25, 1902, known as the Supplemental Agreement, provided:

> "If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement, the lands to which such person would have been entitled, if living, shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent ond distribution as provided in Chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas."

The laws of Arkansas had been put in effect in 1890, and in 1902, the Act of Congress made specific provision for the members of the tribes who should die between the date of enrollment and selection of allotment and again in specific terms the law of descent and distribution of the State of Arkansas is made applicable.

It is immaterial for the purpose of this motion which

of the above acts, or if both of them, put into force the statutes of Arkansas in the Indian Territory. It is undisputed that the Arkansas law of descent and distribution was put into force by act or acts of Congress. The Arkansas law being admitted to be in force the questions here raised concern the construction of an Arkansas act and should be treated as involving only a local law.

It is well established by the decisions of this Court that it will not review decisions of state courts based on local or general law not involving substantial federal questions (27 R. C. L., p. 79).

> "Save in exceptional circumstances, the United States Supreme Court must accept as controlling a decision of the State Court on questions of local law, both statuatory and common." *Amr. Ry. Express Co. v. Commonwealth of Ky.*, No. 5, decided Feb. 21, 1927, 47 S. Ct. 453.

The exceptional circumstances are further defined in said opinion as being "merely arbitrary or capricious exercise of power" and their decision states that "mere erroneous decision given by a state court in regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law" and likewise, the mere erroneous decision of the state court construing a statute put into effect by the Federal government does not constitute a federal question.

Under the legislation of Congress the lands of Indian allottees of the Five Civilized Tribes are made one of local law. Mrs. Puckett having died in 1903, prior to admission of Oklahoma as a state in November 1907, the descent and distribution of her allotted lands should be according to Mansfield's Digest of the laws of Arkansas. Such legislation discloses a uniform policy on the part of Congress to provide that the descent and distribution of such lands upon the death of the allottee, shall be subject to general local laws of descent and distribution of a state or territory in which the allotment is situated, and the mere fact that such general local laws were put into force by Act of Congress are none the less local territorial legislation, there being no local legislative body in Indian Territory, as in organized territories, and are quite distinguishable from other acts of Congress, of a different character (*Parker* v. *Oklahoma Oil Co.*, 218 Fed. Rep. 380).

A suit involving rights to land acquired under a law of the United States does not arise under that law unless it really and substantially involves a dispute or controversy respecting the validity, construction, or effect of such law, upon the determination of which the result depends.

In *Shulthis* v. *McDougal*, 225 U. S. 561, 56 L. ed. 1205, 32 S. Ct. 704, this Court said:

> "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily,

> or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends. This is especially so of a suit involving the rights to land acquired under a law of the United States. If it were not, every suit to establish title to land in the central and western states would so arise" (citing cases).

It will be noted that the answer of the appellant (defendant below) makes no mention of the acts of Congress or any controversy respecting their validity, construction, or effect (Tr. R. p. 12).

Counsel in Shulthis vs. McDougal pointed out the statutes of Congress relating to the allotment in severalty of lands of the Creek Nation, the leasing and alienation thereof after allotment, and making of allotments to the heirs of deceased children, and the rights of the heirs, collectively and severally, under such allotments; but the bill made no mention of any controversy respecting their validity, construction or effect.

> "So looking to the bill (answer) as we have seen that we must, it cannot be held that the case as therein stated was one arising under the statutes mentioned" *Shulthis* v. *McDougal*, *supra*.

A brief statement of the above case will emphasize its applicability to the question here raised. One Andrew J. Berryhill was the son of George Berryhill, a member

of the Creek Nation of the mixed blood, and Clementine Berryhill, his wife, a non-citizen of that tribe. He was born on the 6th day of May, 1901, and died in the month of November of that year leaving no brothers or sisters surviving him. At no time during his life was he entitled to enrollment as a member of the tribe, or to an allotment of its property. After his death, by the supplemental agreement entered into between the Commission to the Five Civilized Tribes and commissioners of the Creek Nation (Act of June 30, 1902, c. 1323, 32 St. 501) proclaimed by the President August 8, 1902, it was provided in section 7 as follows:

> "All children born to those citizens who are entitled to enrollment under previous acts, subsequent to July 1, 1900, and up to and including May, 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission."

Andrew J. Berryhill met precisely the conditions of this agreement. He died, however, before the agreement was entered into, as already stated. But the agreement further made express provision for such a contingency in section 7, as follows:

> "And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands, and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled, if living, shall descend to his heirs, as herein provided, and be allotted and distributed to them."

The phrase "as herein provided" refers to Chapter 49 of Mansfield's Digest of the Statutes of Arkansas, which deals with the subject of heirship and descent. *Shulthis* v. *McDougal*, 170 Fed. 529, (dismissed for want of jurisdiction 225 U. S. 561).

It will be noted that the lands in the above case were the allotment of Andrew J. Berryhill, deceased, and the facts of that case are similar to those of the case at bar. It is apparent to the court that the acts of Congress providing for the enrollment, allotment and descent in the above case are almost identical with the instant case. We believe the law stated therein is controlling and this case should be dismissed for want of jurisdiction.

The Supreme Court of Oklahoma, in *Seiffert* v. *Jones*, 77 Okla. 294, 186 Pac. 472, held that the sixty-day proviso contained in the Act of Congress May 27, 1908, was applicable to allotted land and not to inherited lands. On writ of error to the Supreme Court of Oklahoma said cause was dismissed by this Court for want of jurisdiction (*Jones* v. *Seiffert*, 257 U. S. 618, 42 S. Ct. 95).

A controversy in respect of lands has never been regarded as presenting a Federal question merely because one of the parties to it has derived his title under an act of Congress (*Blackburn* v. *Portland Gold Mining Co.*, 175 U. S. 571, 20 S. Ct. 222.

The objection to an exercise of authority under a statute, or a contention that there has been an erroneous interpretation is not sufficient to support a writ of error to a state court where the validity of the statute is not attacked.

Jett Bros. Distilling Co. v. *City of Carrollton*, 252 U. S. 1, 40 S. Ct. 255, 64 L. ed. 421.
Champion Lbr. Co. v. *Fisher*, 227 U. S. 445, 33 S. Ct. 329, 57 L. ed. 591.
Stadelman v. *Miner*, 246 U. S. 544, 38 S. Ct. 359, 62 L. ed. 875.

In *Perryman* v. *Woodward*, 238 U. S. 148, 35 S. Ct. 830, 59 L. ed. 1242, this Court passed upon the question of whether a certain section of the laws of Arkansas extended over the Indian territory, and said:

"Whether the section was in force is the main question in the case; and as this is, in effect, a question whether the Act of Congress adopted it, it may, without much stretching be regarded as open to review in this court, although if it were one degree more remote, *and concerned the construction of an Arkansas Act admitted to be in force it would be treated as involving only a local law.*"

Conclusion.

We conclude that the question involved in this cause is one which involves the interpretation of a statute admitted to be in effect, involving the construction of a local law, and that it does not involve a dispute or controversy

respecting the validity, construction, or effect of an Act of Congress, and that the cause should be dismissed for want of jurisdiction.

W. F. Semple,
Durant, Oklahoma.

S. Russell Bowers,
Washington, D. C.

Guy Greer,
Robert R. Pruet,
Waurika, Oklahoma.

Supreme Court of the United States

October Term, 1926.

NUMBER 342

C. J. LONGEST, APPELLANT,

vs.

W. C. LANGFORD AND G. N. PUCKETT, APPELLEES.

BRIEF OF DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

This case in the court below is *Longest* v. *Langford*, 114 Okla. 150, 242 Pac. 569. Counsel for appellant has omitted matters in the statement of pleadings which we deem important. The answer of the defendant (appellant) makes no mention of any controversy as to the validity, construction, or effect of an act of Congress, treaty of the United States, or the invalidity of a state statute (Tr. R. p. 12). The answer of the defendant in the trial court (appellant) alleged that C. J. Longest was the owner of two fifths interest in and to the lands sued for by the plaintiff by deeds from children of the said Mary E. Puckett, deceased and admitted "that the plaintiff was the owner of a three-fifths interest in and to said land," ob

tained from three of the children of Mary E. Puckett, deceased (Tr. R. 12). The Supreme Court of Oklahoma decided that appellees were entitled to possession under and by virtue of an estate of curtesy and upon the termination thereof appellee would be a tenant in common with appellant, the one owning a three-fifths interest and the other a two-fifths interest in the remainder.

ARGUMENT.

One Major Question Stated.

There was no dispute as to the material facts in the trial court or the Supreme Court of the State of Oklahoma. Reference to the points relied upon by appellant in his argument and assignments of error disclose that the sole question was whether G. N. Puckett, the surviving husband of Mary E. Puckett, an intermarried citizen of the Choctaw Tribe of Indians, was entitled to an estate by curtesy, under the Arkansas Law of Descent and Distribution, put in force and effect by the Acts of Congress, it being admitted that there was a lawful marriage, the birth of issue capable of inheriting, said allottee having been duly enrolled during her lifetime and said allotment having been selected after the death of the allottee.

Appellee W. C. Langford is the owner by regular conveyance of all the right, title and interest of the said G. N. Puckett in and to the lands in controversy. G. N.

Puckett and his grantee W. C. Langford were entitled to possession under and by virtue of an estate of curtesy under the applicable provisions of Mansfield's Digest of the Statutes of Arkansas, placed in force and effect as the Law of Descent and Distribution of the Indian Territory by acts of Congress.

Equality of Members of Tribes in Distribution of Tribal Property.

It was not the intention of Congress to create any inequalities among the citizens whose names should appear upon the rolls, but that each one should participate in the same manner and to the same extent in the distribution of the tribal property whether selection had been made before or after the death of the allottee. In this connection we desire to call the court's attention to the several applicable statutes and the decisions of the courts charged with the interpretation and application of the same.

Section 22, of the Act of Congress July 1, 1902, approved September 25, 1902, known as the Choctaw Chickasaw Supplemental Agreement, provided:

> "If any person whose name appears on the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property descend to

his heirs according to Chapter 49 of Mansfield's Digest of the Statutes of Arkansas."

Section 5, of the Act of Congress of April 26, 1906, provides:

> "That all patents of deeds to allottees, in any of the Five Civilized Tribes to be hereafter issued, shall issue in the name of the allottee, and if such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs, or his lawful assigns, as if patent or deed had issued to the allottee during his life, and all patents heretofore effective, shall be given like effect; and all patents or other deeds to allottees and other conveyances affecting lands of any of said tribes shall be recorded in the office of the Commissioner of the Five Civilized Tribes, and when so recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the party entitled to receive the same."

And section 32, of the Act of Congress June 25, 1910, reads:

> "Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in their heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life."

These provisions have been construed by this Honorable Court and the Circuit Court of Appeals. This court,

in the case of *Harris* v. *Bell*, 254 U. S. 103, discussing the effect of subsequent legislation upon section 22, *supra*, said:

> "Section 5 of the same (Act 1906) directed that all patents or tribal deeds for allotments should be issued 'in the name of the allottee' meaning the member in whose right the allotment was made and provided that if he were then dead the title should inure to and vest in 'his heirs as if the patent or deed had issued to the allottee during his life.' A like provision is found in section 32 of the Act of June 25th, 1910."

The Circuit Court of Appeals, in construing the effect of Section 5 of the Act of April 26, 1906, *supra*, upon Section 22, of the Act of Congress July 1, 1902, *supra*, said:

> "Here is an express declaration by Congress that the land shall descend to the heirs the same as it would have descended if patent or deed had issued to the allottee during his life, and it is declared that allotments for allottees who have died shall also thus descend. This interpretation by Congress of its own acts leaves no room for doubt" (*Shulthis* v. *McDougal*, 170 Fed. 529).

As early as June, 1909, the Circuit Court of Appeals announced the doctrine that there should be no difference in the devolution of property or the persons who should take, whether the selection had been made before or after the death of the allottee. *Shulthis* v. *McDougal*, *supra*, decided two major questions. First: that the estate was ancestral and not a new acquisition. Second: that after des-

cent had been cast the statute of descent and distribution should be applied as if patent had issued and the allottee had been seised thereof during his lifetime.

This case was dismissed by the Supreme Court for want of jurisdiction, as pointed out in our motion to dismiss this cause, but in *McDougal* v. *McKay*, 237 U. S. 372, this Court, in a case involving a part of the same allotment to Andrew J. Berryhill, said:

> "We recognize the unusual difficulties surrounding the problem presented upon the record, and appreciate the very forceful argument offered in support of the conflicting theories. The circumstances are novel, and the canons of descent are not precisely applicable thereto; but these rules must be accommodated to the facts; and the great purpose of Congress effectuated as nearly as may be. And not only would it be improper for us to disregard the effect of the decisions already announced by the Circuit Court of Appeals, and the Supreme Court of Oklahoma, which are supported by cogent reasoning, but considering the peculiar and rapidly changing conditions within that state, a special consideration must be accorded to them."

Since the decision of the Circuit Court of Appeals, *supra*, the Supreme Court of the State of Oklahoma has reiterated the statement that when descent is cast, the statute of descent and distribution will be applied as if the deceased had died seized of the allotment.

Ned v. *Counliss*, 84 Okla. 138.
Homer v. *Lester*, 95 Okla. 284.

Ground v. *Dingman*, 33 Okla. 760.
Marley v. *Fewell*, 32 Okla. 152.
Barnett v. *Way*, 29 Okla. 780.
Brady v. *Sizemore*, 33 Okla. 169.
Moffett v. *Conley*, 63 Okla. 3.
Cook v. *Childs*, 49 Okla. 321.
Shellenberger v. *Fewell*, 34 Okla. 94.
Rentie v. *McCoy*, 35 Okla. 77.

It is admitted that G. N. Puckett and Mary E. Puckett were legally married, that issue was born capable of inheriting and that Mary E. Puckett was dead. Applying the uniform holdings of the Circuit Court of Appeals and the Supreme Court of Oklahoma that the interest of the allottee descended, the same as if patent had issued in the lifetime of Mary E. Puckett, curtesy would attach as a matter of course.

Rule of Property.

The above cases had been acquiesced in and acted upon since 1909, and the holding that no distinction was to be made in the descent whether the allottee died before or after selecting his allotment has become a rule of property which, recognizing the importance of the security of titles, should not be disturbed, and as said in *McDougal* v. *McKay*, *supra*, considering the conditions "a special consideration must be accorded to them."

These statutes and decisions applied the law of descent and distribution the same as if the deceased al-

lottee had received title (certificate of selection) and died seized of his allotment.

Counsel for appellant is in error in contending that there was no descendible interest prior to the selection of an allotment.

> "The interest of the allottee was a descendible interest. By the Supplemental Agreement of 1900, in the case of the death of a member of the tribes after December 31, 1899, the lands 'to which he would have been entitled if living' were to descend to his heirs. Section 5 of the Act of April 26, 1906, relating to 'patents or deeds to allottees in any of the Five Civilized Tribes' to be thereafter issued, thus including those to be issued to the Seminole allottees, provided that if any such allottee should die before the deed became effective the title to the lands described therein should 'inure to and vest in his heirs' and further, that 'in case any allottee shall die after restrictions have been removed his property shall descend to and vest in his heirs' or lawful assigns as if the patent or deed had issued to the allottee during his life" (*Goat v. United States*, 224 U. S. 458, 32 S. Ct. 544).

There would appear to be no distinction between a descendible interest and an estate of inheritance. Unless there was a descendible interest no kinsman of the deceased allottee could inherit.

The Supreme Court of Oklahoma, in *Moffet v. Conley*, 63 Okla. 3, after a critical analysis of the basic principles underlying all character of estates reached the conclusion that the right of kinsmen to the lands of an ancestor se-

lected after such ancestor's death, was received by right of representation, and that it was not necessary that technically the land descend to the heirs and for it was sufficient to say that it came in the nature and course of descent. "At common law, descent or hereditary sucession is the title whereby a man on the death of his ancestor acquired his estate by right of representation, as his heir at law. An heir therefore is he upon whom the law casts an estate immediately upon the death of the ancestor; and an estate, so descending to the heir, is in law called an inheritance."

No distinction is made by the acts of Congress or the judicial interpretation thereof between the heirs of an Indian who died before making his selection of an allotment and one who died thereafter. The Act of Congress implies that in case of those dying before receiving allotments that the lands should pass to the same persons, and in the same proportion, as it would have passed if the person had died seized thereof. If there were no inheritable or descendible interest prior to selection of allotment there could be no inheritance; escheat would be inevitable. The act of Congress removed this condition and provided that the heir should take the same as if he (the allottee) had received patent in his lifetime. It is conceded that the issuance of patent is seisin in law. As was in said in *Cook v. Childs, supra*:

"But for these provisions, the heirs themselves would have no right thereto by virtue of the fact that they stand in the relation of kinsmen of deceased; and their rights to participate in the distribution depends wholly upon these provisions and attached to the property at the time of selection."

Cases City by Appellant Apply to Curtis Act Allottees.

Counsel for appellant cite several cases in which the statement is made that prior to selection of allotment the allottee was seized of no inheritable estate. But these cases are clearly distinguishable from the case at bar. This language was used in determining what law governed the devolution of the property, and it was held that the date of selection of the allotment determined the law of descent applicable, but, the descent having been cast, the heirs are identified as being the persons in esse at the date of the death of the allottee, who were entitled to take, at the death of the allottee, under the applicable statute.

A further distinction appears in that each and every one of the cases cited arose as to the kind and character of title, if any, which an allottee had under the Curtis Act.

"Therefore, both the allotment and the death of the allottee, occurred within the period during which Sec. 11 of the Curtis Act was in force in the Creek Nation, by the terms of which the commission was directed, upon the completion of the citizenship roll and the survey of lands of the tribes, to proceed to allot the exclusive use and occupancy of the surface

of all lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by the roll, giving to each, so far as possible, his fair and equal share thereof * * *.

"Having regard, therefor, merely to the language employed in Section 11 of the Curtis Act and the contest, there is no foundation for the contention that allottees thereunder took any assignable or inheritable interest in the land or anything more than an exclusive right to possess and enjoy the surface of the land during the lifetime of the occupant.

"And the manifest purpose of the Curtis Act was not to displace but to recognize the communal titles, and to administer the use of the lands for the equal benefit of the members of the tribes according to the true intent and meaning of the early treaties; the effect being to do what the tribal governments ought to have done, but were failing to do."

Further on in the opinion the court discussed the modification wrought by the adoption of the original Creek Agreement and said:

"It is perhaps unnecessary to say that the subsequent issue of patent to the 'heirs of Agnes Hawes' without naming them, conveyed the legal title to those persons upon whom the equitable title was conferred by the original Creek Agreement" (*Woodward* v. *De Graffenreid*, 238 U. S. 284).

Each member of the tribe had an equitable interest, after the adoption of the Supplemental Agreement, Act, July 1, 1902, in and to his allotment thereafter to be received. Mary E. Puckett had been duly enrolled and the Supplemental Agreement had been adopted and every-

thing done necessary to entitle her to an allotment of land and by the adoption of this agreement and the completion of her enrollment she had an equitable title to the allotment to which she was entitled. As a condition precedent to receiving an allotment in severalty it was necessary to relinquish all claim to the communal tribal property. Upon the enrollment of Mary E. Puckett and the adoption of the Supplemental Agreement she became vested with an equitable estate.

Any apparent conflict in the cases cited by counsel for appellant and those on which we rely is dissipated by the decision of the Supreme Court of Oklahoma, in *Homer v. Lester, supra*:

> "While the heirs of Thomas J. Taylor, technically speaking, did not inherit the allotment, it did come to them in the nature of an inheritance, for they had to be heirs of Thomas J. Taylor in order to take the land, and for the purpose of ascertaining, under the law of descent and distribution, who became his heirs, the land will be treated as having been inherited by his heirs. In applying the law of descent, and in applying the provisions of section 22 of the Act of Congress, 1906, no distinction is made between lands technically inherited and lands allotted to heirs, except the descent is not cast until the allotment is selected, as held in *Sizemore v. Brady*, 225 U. S. 441, *McKee v. Henry*, 201 Fed. 74, and several opinions by this Court following that doctrine. Nevertheless, when the descent is cast, this Court has repeatedly held that the statutes of descent and distribution will

be applied as if the deceased died seized of his allotment."

This Court has approved the doctrine announced by the Oklahoma Supreme Court in *Washington* v. *Miller*, 235 U. S. 442, in which it is said:

> "This section as a whole shows that it looked to the future no less than to the present, and was intended to prescribe a rule of descent applicable to all Creek allotments."

This case holds that no different rules should be applied in cases where allotments were selected prior to or after the death of the allottee. No distinction is or should be made in the devolution of the estate under Mansfield's Digest of the Statutes of Arkansas, whether the allotment was selected before or after the death of the allottee.

No Different Seisin Required for Curtesy than Other Estates of Inheritance; There was a Seisin in Fact and in Law.

Counsel for appellant contends that Mary E. Puckett did not have the character of seisin essential to the attaching of curtesy in favor of her surviving husband. It would be inaccurate to attempt to measure the seisin required for an inheritable estate in this country by the rules of the ancient common law. The original object of seisin, which was evidenced by livery of seisin, by twig or turf, was to evince notoriety to the neighborhood. *Green* v. *Liter*, 8 Cranch 229. But the rule has been much relaxed and in many jurisdictions seisin in law is now suf-

ficient even where the lands are in adverse possession of another. 8 R. C. L. 380. "Seisin was originally the completion of the feudal investiture. In American Jurisprudence it means, generally, ownership. The covenant of seisin and the covenant of right to convey are synonymous." *McNitt* v. *Turner*, 83 U. S. 352. In the case of *Green* v. *Liter*, *supra*, discussing the powers of the Virginia assembly to vest title in its patentees, it is said: "It cannot be doubted that the legislature were competent to give their patentees a perfect title and possession without actual entry."

In view of modern methods of acquiring and conveying landed estate it certainly will not be contended that Congress, in the exercise of its plenary power to legislate for the Indians might not dispense entirely with any or all of the conditions and formalities of the vesting of title to the individual allotment of the deceased Indian. This is the practical effect of the provisions of section 22, *supra*, providing that lands shall descend to his heirs and it is immaterial whether the process be styled a seisin in law, or a seisin by operation of law, whatever designation may be used, it is apparent that the doctrine of *Shulthis* v. *McDougal*, *supra*, followed since 1919 and approved by the Supreme Court of Oklahoma and the Supreme Court of the United States, is the only method by which the scheme of allotment could be carried out and the members of the

tribes and their descendants share equally in the lands and other property belonging to the tribes in common. In *Harris* v. *Bell, supra,* it is said: "Titles should inure to and vest in his heirs as if deed or patent had issued to the allottee during his lifetime." There is a clear and distinct expression of this Court that the character of seisin was immaterial, the same persons taking as if patent had issued during the life of the allottee.

Seisin Sufficient to Vest an Estate of Curtesy.

Prior to the date of the ratification of the supplemental Treaty, the lands of the Choctaws and Chickasaws were owned in common and the citizens of the Nation had the absolute right to occupy any of the common lands of the Tribes without any restrictions as to the number of acres or the particularr place where the land might be selected; the members enjoyed the unusual right to occupy any land not fenced and claimed by any other member of the Tribes.

The doctrine of common ownership of land has come down in the history of the Choctaws as one of the sacred rights, and it was with great reluctance that the Tribes were induced to surrender the right of common ownership and accept allotments of land in severalty. In 1894 Congress created what has been known as the Dawes Commission and clothed it with power to proceed to the Five Civilized Tribes residing in the Indian Territory with the

single view of persuading them to negotiate treaties and surrender their common ownership of land and accept allotment in severalty.

There were but few families in the Choctaw and Chickasaw Nations who did not have claim to the possession of lands, and who had not occupied certain lands for several years prior to the date of the ratification of the Supplemental Agreement. The individual members of the Tribe had been receiving their proportionate share of the rents from leased lands and their proportionate share of the moneys derived from townsites and from mineral lands which was equivalent to the common law requirement of taking rents. Each member had been enjoying the benefits of the rents and profits from the tribal lands. After the adoption of the Supplemental Agreement and the enrollment of the allottee the members of the tribe had an equitable interest in and to the allotment thereafter to be selected. *Woodward* v. *De Graffenreid, supra*. There was therefore a seisin in fact which seems to us should answer every purpose and requirement of the Arkansas statute, and this was certainly in the minds of the framers of the Supplemental Treaty, because they took particular pains in that treaty to provide that the lands allotted to members who might die after the ratification of the Supplemental Treaty should descend to the heirs in accordance

with the applicable provisions of Mansfield's Digest of the Statutes of Arkansas. It is difficult to conceive how language could be made more accurate in stating the purpose of the framers of the treaty. They said in substance that the land should descend as if selection had been made in the lifetime, and that the heirs should be identified in accordance with the controlling provisions of Mansfield's Digest of the Statutes of Arkansas.

It was not the intention of Congress to create any inequalities among the citizens whose names should appear upon the rolls, but that each one should participate in the same manner and to the same extent in the distribution of tribal property whether selection had been made before or after the death of the allottee. It was never intended that two citizens duly enrolled, each of whom was entitled to share in the tribal property, where one had selected her allotment and died, her husband would be entitled to curtesy in the allotment of his deceased wife, and the husband of another who died before making her selection should be excluded, even though she died in point of time later than the one who, in fact, made her selection.

Specific Application of the Above Authorities to An Estate of Curtesy.

We have made the foregoing recitation of the facts surrounding the dissolution of the tribal governments and the selection of allotments of land in severalty and have

cited the Oklahoma Supreme Court, the Circuit Court of Appeals and the decisions of this Court as giving the basic principles underlying the decision of the Oklahoma Supreme Court wherein it held that a surviving spouse was entitled to a life estate of curtesy or dower in the lands of the deceased spouse, whether the selection was made before or after the death of the allottee.

In the case of *Cook* v. *Childs*, 49 Okla. 321, the Supreme Court of Oklahoma passed upon the question of dower in the allotment of a deceased member of the Choctaw Tribe of Indians, wherein the allotment was selected after the death of the allottee, and we desire to call the court's special attention to this decision not only as being controlling, as respesenting the interpretation by the State Court of a local law, but also because the reasoning in said case is clear, cogent and convincing.

> "As stated, much stress is laid on the fact in the briefs and oral argument of counsel that at the time of his death the allottee was vested with no actual seisin of the property and had no inheritable interest or estate therein, but the effect of section 22 was to cause the provisions of Chapter 49 to apply to and govern the devolution of the property when so selected by his administrator, in the same manner and with the same effect as if such property had been allotted in his lifetime and had descended to his heirs * * *.
>
> "Thus it is seen that lands to which deceased would have been entitled after having been selected in his name by the administrator under the provisions of

section 22, and of Chapter 49, Mans. Dig., descend to his heirs in the same manner and in the same proportion that they would have descended had he selected the same in his lifetime and have been seized thereof at the time of his death; but for these provisions the heirs themselves would have no right thereto by virtue of the fact that they stand in the relation of kinsmen to the deceased; and their rights to participate in the distribution of his share depends wholly upon these provisions and attach to the property at the time of selection.

"It is urged in the argument that because by the terms of section 22, it is provided that the lands of a deceased Indian, when allotted in his name by an administrator, shall descend to his heirs, the use of the word 'heirs' means the lands shall descend to the 'heirs' to the exclusion of the widow, and that, because she was not named in section 22, the intention was manifest that she was not to be considered in the descent and distribution of these lands; but it will be noticed that this same section, 22, says said property shall descend to the heirs 'according to the laws of descent and distribution as provided in Mans. Digest, Chapter 49, of the Statutes of Arkansas.'

"When we consider the legislation of Congress and its dealings with the tribes, in reference to the tribal property and affairs, we are forced to conclude that, when a definite time was fixed by which it was determined that all Indians living upon that date and whose enrollment should be finally approved were entitled to participate in the allotment of the tribal lands and other tribal property; it was not the intention of Congress to create any inequalities among the citizens whose names should appear upon the rolls, completed in accordance with the legislation, but that each one should participate in the same manner and to the same extent in the distribution of tribal

property. It was never intended that of two citizens duly enrolled, each of whom was entitled to share in the tribal property, where one had selected his allotment and died, his widow would be endowed in his lands, and the widow of the other who died before making his selection, should be excluded, even though he died in point of time later than the one who, in fact, made his selection * * *.

"To our minds, it is clear that it was the intention of Congress and of the tribes to provide that the property of the class mentioned in section 22, should be governed by the same law and descend in the same manner to the same persons and in the same proportion as other tribal property of like character, would descend, and by these provisions, to obviate the necessity of actual seisin, creating as it were a seisin by operation of law, and that the purpose and intention of incorporating said section 22 in the act was to remove from the realm of doubt and make certain the intention that property of this class should descend under the provisions of Chapter 49, whereas it might have been doubtful and the cause of some speculation as to how it should descend had this provision not been incorporated therein."

In *Morris v. Sweeney*, 53 Okla. 163, the same court considered the right of curtesy in an allotment selected after the death of the allottee and after citing Cook vs. Childs, as authority, says:

"By parity of reasoning in the instant case, the enrollment of the deceased, Arran Ann Sweeney, having been finally approved, her lands would descend in the manner, as it would have descended had patent issued during her lifetime."

The decision of the Oklahoma Court in the instant

case is based on the case of Morris vs. Sweeney, wherein it was held in the year 1915, upon identical state of facts, that the husband was entitled to a curtesy.

Section 2534 of Mansfield's Digest, Chapter 49, provided for curtesy by the following language:

> "In all cases not provided for by this act, the inheritance shall descend according to the course of the common law."

Under this provision curtesy had been recognized and enforced by the Court of Arkansas. it is immaterial whether curtesy had also been provided by the Act of Congress, May 2nd, 1890, as contended by counsel for appellant.

The decisions of the Supreme Court of Oklahoma answer every argument of appellant as to the seisin required for an estate of curtesy.

The Supreme Court of Oklahoma has, in a long line of cases, held that curtesy exists in favor of a husband of a deceased allottee.

> ***Johnson*** v. ***Simpson***, 40 Okla. 139, 139 Pac. 129.
> ***Pierce*** v. ***Ellis***, 51 Okla 710, 152 Pac. 340.
> ***Morris*** v. ***Sweeney***, *supra*.
> ***Bridges*** v. ***Wright***, 56 Okla. 10, 155 Pac. 883.
> ***Miles*** v. ***Miles***, 73 Okla. 198, 175 Pac. 222.
> ***Kenoly*** v. ***Hanley***, 84 Okla. 120, 202 Pac. 494.
> ***Condren*** v. ***Martin***, 113 Okla. 259, 241 Pac. 826.

These decisons have established a rule of property

and the Supreme Court will not overturn a local rule of construction which for years has governed the transfer of property.

Reynolds v. *Frizell*, 236 U. S. 58.

We again call the court's attention to our motion to dismiss, and the authorities therein cited that no substantial Federal question is involved, but that when the Arkansas law was adopted by the Act of Congress it became a local law and the interpretation thereof by the proper local tribunal is conclusive, and the Supreme Court will accept as controling a decision of the state court on questions of local law, both statutory and common.

Amr. Ky. Express Co. v. *Commonwealth of Ky.*, No. 5, decided Feb. 21, 1927, 47 S. Ct. 353.
Parker v. *Oklahoma Oil Co.*, 218 Fed 380.
Shulthis v. *McDougal*, 225 U. S. 561.

To summarize, it seems plain that Congress intended to abolish all distinction between lands inherited in a technical sense, and lands allotted in the name of a deceased allottee. It was intended to make this allotment of Mary E. Puckett a part of her estate and to have it descend to her heirs as though patent had issued to her during her lifetime. It is conceded that, had patent issued during the lifetime of the allottee, all of the essential elements of curtesy would have been present, and the clear and distinct expression by the Supreme Court

of the United States, in *Harris* v. *Bell*, *supra*, is that title passed to the heirs as if selection was made in the lifetime of the allottee, thereby eliminating the idea that there could be any distinction between lands selected in the lifetime and lands selected by an administrator. This being true, curtesy must attach in favor of the surviving husband of Mary E. Puckett.

White Husband of Choctaw Citizen Can Inherit.

It is contended that G. N. Puckett, not being a citizen of the Choctaw Nation, could not inherit the lands of his deceased wife. Whether curtesy came by descent or by reason of the marriage relation is immaterial, as we will presently show.

The case of *Condren* v. *Marlin*, *supra*, was construing the provisions of the Creek agreement which contained the proviso:

> "That only citizens of the Creek Nation, male and female, shall inherit lands of the Creek Nation."
>
> Supplemental Creek Agreement (21 St. 500).

No such provision is found in the acts relating to the Chickasaw and Choctaw Nations. The only condition under which the estate of a Choctaw Indian went back to the blood of the ancestor was that provided in section 2531, Chapter 49, of Mansfield's Digest of the Statutes of Arkansas:

> "In cases where the intestate shall die without

descendants, if the estate come by the father, then it shall ascend to the father and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs * * *."

In the instant case, Mary E. Puckett had descendants, living children of her first marriage, and a child born to her and G. N. Puckett. All of these children were living when this cause was tried in the District Court of Jefferson County, Oklahoma. In *Hawkins Estate*, 97 Okla. 195, no issue was living and hence the provision above quoted caused the estate to ascend as an ancestral estate.

Hence the argument that G. N. Puckett could not take by reason of not being of Indian blood, under the facts of the case, has no basis in the laws applicable to the Choctaw Indians. Sections 2522 and 2534 of Chapter 49 of Mansfield's Digest of the Statutes of Arkansas construed together provide for curtesy in the husband and a remainder in equal share to the children of the deceased or their descendants by right of representation. It is immaterial whether curtesy existed by descent or by virtue of the marriage relation, since there is no inhibition against the inheritance by a non-citizen of the Choctaw Tribes inheriting the property of his deceased wife where there were descendants.

That the distinction between the provisions of the Creek and Chickasaw Choctaw Supplemental Agreements

is as we contend is further supported by the fact that in every case cited by counsel for appellant either one of two conditions exist, first, the allottee left no descendants, in which case, if the proper came by the blood of the ancestor it would ascend as an ancestraal estate; or, second, the case involved a Creek allotment wherein it was provided in the Supplemental Creek Agreement that only citizens of the Creek Nation shall inherit.

That non-citizens could inherit unless specifically prohibited by Act of Congress, as in case of the Creek Supplemental Agreement, has become a rule of property and the Supreme Court will not overturn a local rule of construction which for years has governed the transfer of property.

Reynolds v. *Fewell*, 236 U. S. 58.

In view of the facts stated and the authorities cited, we believe the judgment of the Supreme Court of Oklahoma should be affirmed.

Respectfully submitted,

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Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 52.—October Term, 1927.

C. J. Longest, Petitioner, vs. W. C. Langford, et al. } On Writ of Certitorari to the Supreme Court of Oklahoma.

[February 20, 1928.]

Mr. Justice Van Devanter delivered the opinion of the Court.

A claim to an estate by the curtesy in lands allotted and patented in the name and right of a Choctaw woman then deceased is here in controversy. It was sustained by the state court. 114 Okla. 50. The allotment was made and the patent issued under two agreements between the United States and the Choctaw and Chickasaw tribes. Act June 28, 1898, c. 517, § 29, 30 Stat. 505; Act July 1, 1902, c. 1362, 32 Stat. 641.

The agreements set forth a comprehensive scheme for allotting the lands of the two tribes in severalty among their members, distributing the tribal funds and dissolving the tribes. There were also many other related provisions. Nothing was said about curtesy. The agreements were strictly special laws for the Choctaws and Chickasaws.

By prior enactments couched in general terms Congress had put in force in the Indian Territory, and made applicable to the people therein irrespective of race, several statutes of Arkansas.[1] One of these Arkansas statutes—chapter 20 of Mansfield's Digest—had been construed as recognizing a form of curtesy consummate attaching on the death of the wife intestate where she was then seized of the land. Another—chapter 49 of the same publication—related to descent and distribution. The Choctaw and Chickasaw lands were in the Indian Territory, and so were the lands of several other Indian tribes. The claim to dower in this case is rested on the adopted Arkansas law of curtesy.

[1] These congressional enactments and the indicated Arkansas laws are described in Marlin v. Lewallen, just decided.

The second of the two agreements—it largely superseded the first—required that the lands of the two tribes be allotted among the enrolled members who were living at the date of its ratification. Anticipating that some of these might die before the allotments were made, the agreement provided in § 22:

"If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas."

The lands in dispute were allotted under that section; and the real controversy here is over its construction. It is part of a special law put in force with the solicited assent of the Choctaws and Chickasaws and applicable only to them. We think it would be understood by the Indians as meaning that lands allotted under it in the name of a deceased member should pass to those who would be his or her heirs according to chapter 49 of Mansfield's Digest. With that chapter specially designated and chapter 20—the sole basis of the Arkansas law of curtesy—not mentioned the Indians certainly would not understand that curtesy was intended. It follows that § 22 must be construed as intended to pass the full title free from any claim to curtesy. *Martin* v. *Lewellen*, just decided.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.